

APPENDIX B-5

**STANDARD TERMS AND CONDITIONS
FOR**

**FIRM FIXED-PRICE SUBCONTRACTS FOR
ARCHITECT-ENGINEERING SERVICE**

October 1, 2008

APPENDIX B-5 INDEX

<u>Clause</u>	<u>Title</u>	<u>Page</u>
Clause 1.	DEFINITIONS (SPECIAL) (OCT 2008)8 <i>Derived from FAR 52.202-1 (JUL 2004) as modified by DEAR 902.200 (MAR 2002)</i> <i>(Applies to all subcontracts.)</i> <i>“Head of the Agency” means the Secretary, Deputy Secretary, or Under Secretary of the Department of Energy (DOE).</i>	
Clause 2.	SUBCONTRACT ISSUES AND DISPUTES (SPECIAL) (SEP 2007)10 <i>Derived from NREL 08.100-01</i> <i>(Applies to all subcontracts.)</i>	
Clause 3.	SECURITY AND ACCESS REQUIREMENTS FOR SUBCONTRACT WORK PERFORMED AT NREL OPERATED FACILITIES (SPECIAL-CONSTRUCTION) (AUG 2008)11 <i>Derived from NREL 08.100-03</i> <i>[Applies to all subcontracts where Subcontractors’ employees (or lower-tier Subcontractors’ employees) and their officers, agents, or other persons representing the Subcontractor will enter onto NREL operated facilities, including Government-owned or leased property.]</i>	
Clause 4.	LOBBYING RESTRICTIONS (ENERGY & WATER ACT) (SPECIAL) (2007)13 <i>Derived from NREL 08.100-04</i> <i>(Applies to all subcontracts.)</i>	
Clause 5.	SUBCONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (SPECIAL) (MAY 2003)13 <i>Derived from NREL 08.100-05</i> <i>(Applies to all subcontracts.)</i>	
Clause 6.	RESTRICTIONS ON LOWER-TIER SUBCONTRACTOR SALES TO NREL/GOVERNMENT (SEP 2006)13 <i>Derived from FAR 52.203-6 (FD)</i> <i>(Applies to all subcontracts exceeding \$100,000.)</i>	
Clause 7.	ANTI-KICKBACK PROCEDURES (JUL 1995)14 <i>Derived from FAR 52.203-7 (FD)</i> <i>(Applies to all subcontracts exceeding \$100,000.)</i>	
Clause 8.	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)15 <i>Derived from FAR 52.203-12 (FD)</i> <i>(Applies to all subcontracts exceeding \$100,000.)</i>	
Clause 9.	PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (SPECIAL) (MAY 2003)19 <i>Derived from FAR 52.204-4 (AUG 2000)</i> <i>(Applies to all subcontracts exceeding \$100,000.)</i>	

Clause 10.	PROTECTING NREL'S/GOVERNMENT'S INTEREST WHEN SUBCONTRACTING AT ANY TIER WITH CONTRACTORS AND SUBCONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEP 2006).....	20
	<i>Derived from FAR 52.209-6 (FD)</i>	
	<i>(Applies to all subcontracts with lower-tier subcontracts exceeding \$25,000)</i>	
Clause 11.	AUDIT AND RECORDS NEGOTIATION (JUN 1999) AND ALTERNATE II (APR 1998)	20
	<i>Derived from FAR 52.215-2 (FD)</i>	
	<i>(Applies to all subcontracts exceeding \$100,000.)</i>	
	<i>(Alternate II applies to cost-type subcontracts with State and Local Governments, educational institutions, and other nonprofit organizations.)</i>	
	<i>For cost-type subcontracts with State and Local Governments, educational institutions, and other non-profit organizations, the following paragraph (h) shall be added.</i>	
Clause 12.	NOTIFICATION OF CHANGE IN OWNERSHIP AND/OR NAME (SPECIAL) (OCT 2008)	22
	<i>Derived from FAR 52.215-19 (FD) (OCT 1997)</i>	
	<i>(Applies to all subcontracts.)</i>	
Clause 13.	UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)	22
	<i>Derived from FAR 52.219-8 (FD)</i>	
	<i>(Applies to all subcontracts exceeding \$100,000.)</i>	
Clause 14.	CONVICT LABOR (JUN 2003).....	24
	<i>Derived from FAR 52.222-3</i>	
	<i>(Applies to All Subcontracts)</i>	
Clause 15.	WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)	25
	<i>Derived from FAR 52.222-20</i>	
	<i>(Applies to all subcontracts exceeding \$10,000 for manufacturing or furnishing of materials, supplies, articles or equipment subject to the Walsh Healey Public Contracts Act.)</i>	
Clause 16.	PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)	25
	<i>Derived from FAR 52.222-21 (FD)</i>	
	<i>(Applies to subcontracts where the "Equal Opportunity Clause" is applicable.)</i>	
Clause 17.	EQUAL OPPORTUNITY (MAR 2007)	25
	<i>Derived from FAR 52.222-26 (FD)</i>	
	<i>(Applies to all subcontracts unless exempt from Executive Order 11246</i>	
	<i>(See FAR 22.807(a).)</i>	
Clause 18.	AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (SEP 2006)	27
	<i>Derived from FAR 52.222-35 (FD)</i>	
	<i>(Applies to all subcontracts exceeding \$100,000.)</i>	

Clause 19.	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)	31
	<i>Derived from FAR 52.222-36 (FD)</i> <i>(Applies to all subcontracts exceeding \$10,000.)</i>	
Clause 20.	EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (SEP 2006)	32
	<i>Derived from FAR 52.222-37 (FD)</i> <i>(Applies to all subcontracts exceeding \$100,000.)</i>	
Clause 21.	DRUG-FREE WORKPLACE (MAY 2001)	33
	<i>Derived from FAR 52-223-6 (FD)</i> <i>(Applies to all subcontracts where work is to be performed on NREL operated facilities, including Government-owned or - leased property.)</i>	
Clause 22.	ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (SPECIAL) (OCT 2008)	34
	<i>Derived from FAR 52.223-15 (DEC 2007) (FD)</i> <i>(Applies to subcontracts where energy consuming products will be delivered, acquired, or furnished for (i) use by the Subcontractor or NREL on DOE-owned or -leased facilities or (ii) construction, renovation, or maintenance of DOE-owned or -leased facilities.)</i>	
Clause 23.	RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)	35
	<i>Derived from FAR 52.225-13 (FD)</i> <i>(Applies to all subcontracts exceeding \$2,500.)</i>	
Clause 24.	INSURANCE - WORK ON A GOVERNMENT INSTALLATION (SPECIAL-CONSTRUCTION) (JUL 2008)	35
	<i>Derived from FAR 52.228-5c (JAN 1997)</i> <i>(Applies to all construction subcontracts except design-build subcontracts.)</i>	
Clause 25.	FEDERAL, STATE, AND LOCAL TAXES (APR 2003)	36
	<i>Derived from FAR 52.229-3</i> <i>(Applies to competitive fixed price subcontracts exceeding \$100,000.)</i>	
Clause 26.	TAXES--FOREIGN FIXED PRICE SUBCONTRACTS (JUN 2003)	37
	<i>Derived from FAR 52.229-6</i> <i>(Applies to fixed price subcontracts exceeding \$100,000 performed wholly or partly in a foreign country.)</i>	
Clause 27.	ASSIGNMENT OR TRANSFER (SPECIAL) (OCT 2008)	39
	<i>Derived from 52.232-24 (JAN 1986)</i> <i>(Applies to all subcontracts.)</i>	
Clause 28.	DESIGN WITHIN FUNDING LIMITATIONS (APR 1984)	39
	<i>Derived from FAR 52.236-22</i> <i>(Applies to architect-engineer subcontracts.)</i>	
Clause 29.	RESPONSIBILITY OF THE ARCHITECT-ENGINEER SUBCONTRACTOR (APR 1984)	40
	<i>Derived from FAR 52.236-23</i> <i>(Applies to architect-engineer subcontracts.)</i>	

Clause 30.	WORK OVERSIGHT IN ARCHITECT-ENGINEER SUBCONTRACTS (APR 1984).....	40
	<i>Derived from FAR 52.236-24</i>	
	<i>(Applies to architect-engineer subcontracts.)</i>	
Clause 31.	REQUIREMENTS FOR REGISTRATION OF DESIGNERS (JUN 2003)	40
	<i>Derived from FAR 52.236-25</i>	
	<i>(Applies to architect-engineer subcontracts.)</i>	
Clause 32.	PROTECTION OF NREL/GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)	41
	<i>Derived from FAR 52.237-2</i>	
	<i>(Applies to service subcontracts not involving construction to be performed on Government-owned or -leased facility.)</i>	
Clause 33.	BANKRUPTCY (JUL 1995).....	41
	<i>Derived from FAR 52.242-13</i>	
	<i>(Applies to all subcontracts.)</i>	
Clause 34.	SUSPENSION OF WORK (APR 1984).....	41
	<i>Derived from FAR 52.242-14</i>	
	<i>(Applies to construction and architect-engineer subcontracts.)</i>	
Clause 35.	STOP WORK ORDER (AUG 1989) AND ALTERNATE 1 - COST REIMBURSEMENT (APR 1984).....	42
	<i>Derived from FAR 52.242-15</i>	
	<i>(Applies to all subcontracts.)</i>	
	<i>(Alternate I applies to cost-type subcontracts.)</i>	
Clause 36.	CHANGES - FIXED PRICE (AUG 1987) AND ALTERNATES I THROUGH V (APR 1984).....	43
	<i>Derived from FAR 52.243-1</i>	
	<i>(Applies to fixed price subcontracts.)</i>	
	<i>(Alternate I applies to subcontracts for services where no supplies are to be furnished--other than architect-engineer or other professional services subcontracts.)</i>	
	<i>(Alternate II applies to subcontracts for services where supplies are to be furnished--other than architect-engineer services, transportation, or research and development.)</i>	
	<i>(Alternate III applies to subcontracts for architect-engineer or other professional services.)</i>	
	<i>(Alternate IV applies to subcontracts for transportation services.)</i>	
	<i>(Alternate V applies to fixed price research and development subcontracts.)</i>	
Clause 37.	LOWER-TIER SUBCONTRACTS (JUN 2007) INCORPORATING ALTERNATE I (JUN 2007).....	45
	<i>Derived from FAR 52.244-2</i>	
	<i>(Applies to all cost type subcontracts. Applies to letter, fixed price, time and material, and labor hour subcontracts exceeding \$100,000.)</i>	

Clause 38.	LOWER-TIER SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (ARCHITECT-ENGINEER SERVICES) (AUG 1998).....	47
	<i>Derived from FAR 52.244-4</i>	
	<i>(Applies to architect-engineer subcontracts.)</i>	
Clause 39.	LOWER-TIER SUBCONTRACTS FOR COMMERCIAL ITEMS (MAR 2007)	47
	<i>Derived from FAR 52.244-6 (FD)</i>	
	<i>(Applies to subcontracts for supplies or services other than commercial items.)</i>	
Clause 40.	PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003).....	48
	<i>Derived from FAR 52.247-63 (FD)</i>	
	<i>(Applies to subcontracts that involve international air transportation.)</i>	
Clause 41.	PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006).....	49
	<i>Derived from FAR 52.247-64 (FD)</i>	
	<i>(Applies to subcontracts that involve ocean transportation of supplies subject to the Cargo Preference Act of 1954.)</i>	
Clause 42.	TERMINATION (FIXED PRICE ARCHITECT-ENGINEER) (APR 1984).....	50
	<i>Derived from FAR 52.249-7 (FD)</i>	
	<i>(Applies to fixed price architect-engineer subcontracts.)</i>	
Clause 43.	WHISTLEBLOWER PROTECTION FOR SUBCONTRACTOR EMPLOYEES (DEC 2000).....	51
	<i>Derived from DEAR 952.203-70(FD)</i>	
	<i>(Applies to subcontracts for work directly related to activities at DOE-owned or -leased facilities.)</i>	
Clause 44.	SENSITIVE FOREIGN NATIONS CONTROLS (SPECIAL) (MAY 2003).....	51
	<i>Derived from (DEAR 952.204-71) (FD)</i>	
	<i>(Applies to all subcontracts.)</i>	
Clause 45.	PUBLIC AFFAIRS (SPECIAL) (OCT 2008).....	52
	<i>Derived from DEAR 952.204-75</i>	
	<i>(Applies to subcontracts where the Subcontractor will release unclassified information related to NREL/DOE policies, programs, and activities.)</i>	
Clause 46.	INSPECTION IN ARCHITECT-ENGINEER SUBCONTRACTS (APR 1994)	53
	<i>Derived from DEAR 952.236-71</i>	
	<i>(Applies to architect-engineer, design-build subcontracts.)</i>	
Clause 47.	FOREIGN TRAVEL (SPECIAL) (MAY 2003).....	53
	<i>Derived from DEAR 952.247-70 (DEC 2000) and DOE Order 551.1 (FD)</i>	
	<i>(Applies to all subcontracts where foreign travel may be required.)</i>	
Clause 48.	ACCESS TO AND OWNERSHIP OF RECORDS (SPECIAL) (OCT 2008).....	53
	<i>Derived from DEAR 970.5204-3 (JUL 2005) (FD)</i>	
	<i>(Applies to cost type subcontracts exceeding \$2M and cost type subcontracts involving complex or hazardous work that is to be performed on a Government-owned or-leased facility and the clause Integration of Environment, Safety, and Health into Work Planning and Execution (48 CFR 970.5223-1), or similar clause, is applicable.)</i>	

NREL Appendix B-5

(Applies to cost type subcontracts where the DOE Contracting Officer or the NREL Subcontract Administrator has specifically notified the Subcontractor that the subcontract is or involves a critical task related to the Prime Contract.)

- Clause 49. PRINTING (DEC 2000).....55**
Derived from DEAR 970.5208-1 (FD)
(Applies to all subcontracts where printing is required as this term is defined in Title I of the U.S. Government Printing and Binding Regulations.)
- Clause 50. INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)56**
Derived from DEAR 970.5223-1(FD)
(Applies to subcontracts involving complex or hazardous work that is to be performed on a Government-owned or -leased facility.)
- Clause 51. PROPERTY (SPECIAL) (OCT 2008).....58**
Derived from DEAR 970.5245-1 (DEC 2000) and Alternate 1 (Dec 2000)(FD)
(Applies to all subcontracts where Government Property is to be furnished to or acquired by the Subcontractors.)
(Alternate 1 applies if the Subcontractor is a non-profit.)

Clause 1. DEFINITIONS (SPECIAL) (OCT 2008)

Derived from FAR 52.202-1 (JUL 2004) as modified by DEAR 902.200 (MAR 2002)

(Applies to all subcontracts.)

“Head of the Agency” means the Secretary, Deputy Secretary, or Under Secretary of the Department of Energy (DOE).

- (a) “Commercial component” means any component that is a commercial item.
- (b) “Commercial item” means—
 - (1) Any item, other than real property, that is of a type customarily used for non-governmental purposes and that—
 - (i) Has been sold, leased, or licensed to the general public; or
 - (ii) Has been offered for sale, lease, or license to the general public.
 - (2) Any item that evolved from an item described in paragraph (c) (1) of this clause through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;
 - (3) Any item that would satisfy a criterion expressed in paragraphs (c) (1) or (c) (2) of this clause, but for—
 - (i) Modifications of a type customarily available in the commercial marketplace; or
 - (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. “Minor modifications” means modifications that do not significantly alter the non-governmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor.
 - (4) Any combination of items meeting the requirements of paragraphs (c) (1), (2), (3), or (5) of this clause that are of a type customarily combined and sold in combination to the general public;
 - (5) Installation services, maintenance services, repair services, training services, and other services if such services are procured for support of an item referred to in paragraphs (c) (1), (2), (3), or (4) of this clause, and if the source of such services—
 - (i) Offers such services to the general public and the Federal Government contemporaneously and under similar terms and conditions; and
 - (ii) Offers to use the same work force for providing the Federal Government with such services as the source uses for providing such services to the general public.
 - (6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed;
 - (7) Any item, combination of items, or service referred to in subparagraphs (c) (1) through (c) (5), notwithstanding the fact that the item, combination of items, or

NREL Appendix B-5

- service is transferred between or among separate divisions, subsidiaries, or affiliates of a Subcontractor; or
- (8) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local Governments.
 - (c) “Component” means any item supplied to the Federal Government as part of an end item or of another component, except that for use in FAR clauses derived from 52.225-9, and 52.225-11 see the definitions in 52.225-9(a) and 52.225.11(a).
 - (d) “DOE Contracting Officer” means a person with the authority to enter into, administer, and/or terminate DOE prime contracts and make related determinations and findings with respect to subcontracts issued pursuant to the DOE prime contract. The term includes certain authorized representatives of the DOE Contracting Officer acting within the limits of their authority as delegated by the DOE Contracting Officer.
 - (e) “NREL Subcontract Administrator” means an employee of the National Renewable Energy Laboratory (NREL) with the authority to enter into, administer, and/or terminate subcontracts and make related determinations and findings. The term includes certain authorized representatives of the NREL Subcontract Administrator acting within the limits of their authority as delegated by the NREL.
 - (f) “Non-developmental item” means—
 - (1) Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government, or a foreign government with which the United States has a mutual defense cooperation agreement;
 - (2) Any item described in paragraph (g)(1) of this definition that requires only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency; or
 - (3) Any item of supply being produced that does not meet the requirements of paragraph (f) (1) or (g) (2) solely because the item is not yet in use.
 - (g) Except as otherwise provided in this subcontract, the term “subcontracts” includes, but is not limited to, lower-tier subcontracts and changes and modifications to lower-tier subcontracts and purchase orders and changes and modifications to purchase orders under this subcontract.
 - (h) “DOE” means the Department of Energy.
 - (i) “Contractor” or “DOE Prime Contractor” means the entity managing and operating the National Renewable Energy Laboratory under prime contract to the U.S. Department of Energy (DOE). The National Renewable Energy Laboratory (NREL) is a Department of Energy-owned national laboratory, managed and operated by the DOE Prime Contractor.
 - (j) “DOE Directive” means DOE Orders and Notices, modifications thereto, and other forms of directives, including for purposes of this subcontract those portions of DOE’s accounting and procedures handbook applicable to integrated Contractors, issued by DOE. The term does not include temporary written instructions by the DOE Contracting Officer or the NREL Subcontract Administrator for the purpose of addressing short-term or urgent DOE and NREL concerns relating to health, safety, or the environment.

Clause 2. SUBCONTRACT ISSUES AND DISPUTES (SPECIAL) (SEP 2007)

Derived from NREL 08.100-01

(Applies to all subcontracts.)

- (a) It is NREL's practice to try to resolve all contractual issues by mutual agreement at the NREL Subcontract Administrator's level, without litigation. Both parties hereby agree to explore all reasonable avenues for negotiations in order to avoid a dispute. Either party may provide written notice to the other party to conduct negotiations for a period not to exceed sixty (60) calendar days. After sixty calendar days, if possibilities for negotiations have failed, either party shall have thirty (30) calendar days to request that the potential dispute be moved to Alternative Dispute Resolution (ADR). Within fifteen (15) calendar days after receiving a request to move to ADR, if ADR procedures are not acceptable to the non-moving party, a written explanation citing specific reasons for rejecting ADR as inappropriate for resolution of the dispute shall be provided to the moving party. If the parties are unable to agree on the application of ADR procedures to resolve the potential dispute or are unable to satisfactorily resolve the dispute using ADR procedures for a period not to exceed ninety (90) calendar days (or such longer period as mutually agreed in writing), the parties shall resume the formal process authorized in this clause.
- (b) The parties agree that the appropriate forum for litigation of any dispute pertaining to this subcontract shall be a court of competent jurisdiction as follows:
 - (1) Subject to paragraph (b) (2) of this clause, any such litigation shall be brought and prosecuted exclusively in Federal District Court; with venue in the United States District Court of Colorado in Denver, Colorado.
 - (2) Provided, however, that in the event the requirements for jurisdiction in any Federal District Court are not present, such litigation shall be brought in a court of competent jurisdiction in the county of Jefferson and State of Colorado.
- (c) Any substantive issue of law in such litigation shall be determined in accordance with the body of applicable Federal law relating to the interpretation and application of clauses derived from Federal Acquisition Regulations (FAR) and the Department of Energy Acquisition Regulations that implement and supplement the FAR. If there is no applicable Federal law, the law of the State of Colorado shall apply in the determination of such issues. Conflict of law provisions shall not determine applicable governing law. Nothing in this clause shall grant the Subcontractor by implication any statutory rights or remedies not expressly set forth in this subcontract.
- (d) There shall be no interruption in the prosecution of the work, and the Subcontractor shall proceed diligently with the performance of this subcontract pending final resolution of any contractual issues, disputes, or litigation arising under or related to this subcontract between the parties hereto or between the Subcontractor and lower-tier Subcontractors or suppliers.
- (e) The Contract Disputes Act of 1978 (41 U.S.C. Sections 601-613) shall not apply to this subcontract; provided, however, that nothing in this clause shall prohibit NREL, in its sole discretion, from sponsoring a dispute of the Subcontractor for resolution under the provision of its prime contract with DOE. In the event that NREL so sponsors a dispute at the request of the Subcontractor, the Subcontractor shall be bound by the decision of the cognizant DOE Contracting Officer to the same extent and in the same manner as NREL.
- (f) Any disputes relative to intellectual property matters will be governed by other provisions of this subcontract.

Clause 3. SECURITY AND ACCESS REQUIREMENTS FOR SUBCONTRACT WORK PERFORMED AT NREL OPERATED FACILITIES (SPECIAL-CONSTRUCTION) (AUG 2008)

Derived from NREL 08.100-03

[Applies to all subcontracts where Subcontractors' employees (or lower-tier Subcontractors' employees) and their officers, agents, or other persons representing the Subcontractor will enter onto NREL operated facilities, including Government-owned or leased property.]

- (a) Security requirements.
 - (1) NREL has established security requirements to govern access onto NREL operated facilities by the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers, agents, and any other persons representing the Subcontractor.
 - (i) The introduction of certain "controlled" commodities and/or activities on the NREL operated facilities is prohibited. Prohibited articles include firearms, explosive devices, incendiary devices, dangerous weapons or materials, controlled substances (illegal drugs), alcoholic beverages, and livestock. NREL operated facilities and DOE-owned or-leased property is closed to all hunting.
 - (2) As a condition of entry to NREL operated facilities, the Subcontractor agrees to permit NREL Security personnel to search the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents' vehicles, packages, tool boxes, or other containers for the purpose of preventing prohibited articles to be brought onto NREL operated facilities or to detect or deter the unauthorized removal of Government property from NREL operated facilities.
 - (3) The Subcontractor is solely responsible for the security of the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents' materials and equipment at the NREL operated facilities. Any security system the Subcontractor may elect to use (fences, keys, alarms, etc.) must be coordinated with the NREL Project Manager.
 - (4) The Subcontractor is responsible to advise the NREL Project Manager promptly of any non-routine events, occurrences, incidents, accidents, etc., particularly in situations involving lost time accidents and ambulance runs, occurring under this subcontract.
 - (5) NREL Security reserves the right to revoke site access authorization for any person violating NREL or DOE security policies and procedures.
- (b) Access requirements for U.S. citizens.
 - (1) Access to NREL operated facilities is controlled in accordance with the DOE's security requirements. The Subcontractor shall ensure that any of the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents who will enter onto the NREL operated facilities are specifically authorized site access under the NREL requirements set forth in the NREL Access Control Policy and Program, including identification, badging, and registration by NREL Security. A two-week advance notice to NREL Security processed through the NREL Subcontract Administrator is required prior to access by U.S. citizens.
- (c) Access requirements for persons who are not U.S. citizens.
 - (1) The Subcontractor shall ensure that any of the Subcontractor's employees (or its lower-tier Subcontractors' employees) and their officers, and agents who will enter onto NREL operated facilities and who are not U.S. citizens meet the requirements set forth in NREL's Foreign National Management Policy and Program, including: (a) appropriate work authorization documentation

- (i.e. Visa); (b) completion of an NREL Foreign National Data Card; and (c) NREL Manager-level approval.
- (2) Foreign Nationals from DOE-designated "Sensitive Countries" will be processed for a Federal background check. This process requires a minimum of two weeks. Foreign Nationals from DOE-designated "Terrorist Supporting Countries" will not be allowed. The Subcontractor should contact the NREL Subcontract Administrator to obtain the most current listing of "Sensitive Countries" and "Terrorist Supporting Countries."
- (i) It is the Subcontractor's responsibility to obtain and provide all necessary information and documentation to meet NREL, DOE, and Federal requirements regarding Subcontractors' employees (or its lower-tier Subcontractors' employees) and their officers' and agents' work authorization and identification to the NREL Project Manager and the NREL Subcontract Administrator to meet the appropriate time frames for NREL Security to process and approve the request for access. Any person(s) denied access by NREL Security or DOE shall not be assigned by the Subcontractor to enter onto or perform subcontract work at NREL operated facilities.
- (3) Prior to the initiation of subcontract that requires entry onto NREL operated facilities, the Subcontractor shall provide to the NREL Subcontract Administrator advance notice and necessary evidence (including Visa types and expiration dates) that legally sufficient work permits have been obtained from the U.S. Citizenship and Immigration Services. Further, the Subcontractor is responsible to ensure that such permits are properly maintained for any of the Subcontractor's employees (and its lower-tier Subcontractors' employees) and their officers and agents who are not U.S. citizens for the duration of subcontract work at NREL operated facilities.
- (4) After the Subcontractor (and its lower-tier Subcontractors) has commenced work under the subcontract, the Subcontractor shall provide to the NREL Subcontract Administrator the same advance notice and necessary evidence (including Visa types and expiration dates) for all subsequently assigned individuals who are not U.S. citizens who will enter onto NREL operated facilities.
- (d) Access Requirements for all persons.
- (1) All persons entering NREL operated facilities must display a valid NREL (or DOE) issued identification badge. The Subcontractor is responsible to coordinate badge requirements for entrance onto NREL operated facilities for all the Subcontractor's employees (and lower-tier Subcontractors' employees) and their officers and agents to ensure the display and return of all issued badges.
- (2) The Subcontractor is responsible to coordinate with the NREL Technical Monitor all vehicle parking requirements needed to perform the subcontract work on the NREL operated facilities. Vehicle access by Subcontractors and other visitors to the NREL operated facilities are controlled on a 24-hour, 7-day per week basis.
- (3) The Subcontractor is cautioned that effective January 1, 2007, the Colorado Revised Statutes (CRS 8-2-122) require employers that transact business in Colorado to comply with employment verification requirements to affirm that the employer has examined the legal work status of newly-hired employees and has retained file copies of the documents required by the Federal Immigration Reform and Control Act (8 USC 1324a).

- (e) The Subcontractor shall include this clause, including this Paragraph (e), in all lower-tier subcontracts that require entry onto NREL operated facilities.”

Clause 4. LOBBYING RESTRICTIONS (ENERGY & WATER ACT) (SPECIAL) (2007)

Derived from NREL 08.100-04

(Applies to all subcontracts.)

The Subcontractor or awardee agrees that none of the funds obligated on this award shall be expended, directly or indirectly, to influence Congressional action on any legislative or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

Clause 5. SUBCONTRACTOR ACCEPTANCE OF NOTICES OF VIOLATION OR ALLEGED VIOLATIONS, FINES, AND PENALTIES (SPECIAL) (MAY 2003)

Derived from NREL 08.100-05

(Applies to all subcontracts.)

- (a) The Subcontractor shall immediately notify the NREL Subcontract Administrator of any notice the Subcontractor may receive including Notice of Violations (NOV) or Notice of Alleged Violations (NOAV) issued by federal, state, or local regulators associated with the operations of NREL and/or performance of work under the Subcontract.
- (b) When deemed appropriate by the NREL Subcontract Administrator, the Subcontractor shall conduct negotiations with regulators regarding NOV/NOAVs, fines and penalties, including, if the NREL Subcontract Administrator so requires, accepting NOV/NOAVs in its own name. The Subcontractor shall make no commitments or offers to regulators binding NREL/Government unless approved in advance and in writing by the NREL Subcontract Administrator. Failure to obtain such advance written approval may result in otherwise allowable costs being declared unallowable and/or the Subcontractor being liable for any excess costs to NREL/Government associated with or resulting from such offers/commitments.
- (c) The Subcontractor shall support and provide assistance to the NREL/Government concerning any matter arising under a NOV/NOAV.

Clause 6. RESTRICTIONS ON LOWER-TIER SUBCONTRACTOR SALES TO NREL/GOVERNMENT (SEP 2006)

Derived from FAR 52.203-6 (FD)

(Applies to all subcontracts exceeding \$100,000.)

- (a) Except as provided in (b) of this clause, the Subcontractor shall not enter into any agreement with an actual or prospective lower-tier Subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such lower-tier Subcontractors directly to NREL/Government of any item or process (including computer software) made or furnished by the lower-tier Subcontractor under this subcontract or under any follow-on production subcontract.
- (b) The prohibition in (a) of this clause does not preclude the Subcontractor from asserting rights that are otherwise authorized by law or regulation.

- (c) The Subcontractor agrees to incorporate the substance of this clause, including this paragraph (c), in all lower-tier subcontracts under this subcontract which exceed the simplified acquisition threshold.

Clause 7. ANTI-KICKBACK PROCEDURES (JUL 1995)

Derived from FAR 52.203-7 (FD)

(Applies to all subcontracts exceeding \$100,000.)

- (a) Definitions.
 - (1) "Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any Prime Contractor, Prime Contractor employee, Subcontractor, or Subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.
 - (2) "Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.
 - (3) "Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.
 - (4) "Prime Contractor," as used in this clause, means a person who has entered into a prime contract with the United States.
 - (5) "Prime Contractor Employee," as used in this clause, means any officer, partner, employee, or agent of a Prime Contractor.
 - (6) "Subcontract," as used in this clause, means a contract or contractual action entered into by a Prime Contractor or Subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.
 - (7) "Subcontractor," as used in this clause, means—
 - (i) Any person, other than the Prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract; and
 - (ii) Any person who offers to furnish or furnishes general supplies to the Prime Contractor or a higher-tier Subcontractor.
 - (8) "Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a Subcontractor.
- (b) The Anti-Kickback Act of 1986 (41 U.S.C. 51-58) (the Act), prohibits any person from—
 - (1) Providing or attempting to provide or offering to provide any kickback;
 - (2) Soliciting, accepting, or attempting to accept any kickback; or
 - (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a Prime Contractor to the United States or in the subcontract price charged by a Subcontractor to a Prime Contractor or higher-tier Subcontractor.
- (c) (1) The Subcontractor shall have in place and follow reasonable procedures designed to prevent and detect violations described in paragraph (b) of this clause in its own operations and direct business relationships.

NREL Appendix B-5

When the Subcontractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Subcontractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the Department of Energy, the head of the DOE if the agency does not have an inspector general, or the Department of Justice.

- (1) The Subcontractor shall cooperate fully with any Federal agency and NREL investigating a possible violation described in paragraph (b) of this clause.
- (2) The DOE Contracting Officer may—
 - (i) Direct NREL to offset the amount of the kickback against any monies owed by NREL under this subcontract; and/or
 - (ii) Direct that the Subcontractor withhold from sums owed the lower-tier Subcontractor the amount of the kickback. The DOE Contracting Officer may order that monies withheld under subdivision (c) (4) (ii) of this clause be paid over to NREL or the Government unless NREL has already offset those monies under subdivision (c) (4) (ii) of this clause be paid over to NREL or the Government unless NREL has already offset those monies under subdivision (c) (4) (i) of this clause. In either case, the Subcontractor shall notify the NREL Subcontract Administrator when the monies are withheld.
- (3) The Subcontractor agrees to incorporate the substance of this clause, including subparagraph (c) (5) except paragraph (c) (1), in all lower-tier subcontracts under this subcontract which exceed \$100,000.

Clause 8. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (SEP 2007)

Derived from FAR 52.203-12 (FD)

(Applies to all subcontracts exceeding \$100,000.)

- (a) Definitions. As used in this clause—
 - (1) “Agency,” as used in this clause, means “executive agency” as defined in Federal Acquisition Regulation (FAR) 2.101.
 - (2) “Covered Federal action,” as used in this clause, means any of the following actions:
 - (i) The awarding of any Federal contract or a subcontract under a Federal contract.
 - (ii) The making of any Federal grant.
 - (iii) The making of any Federal loan.
 - (iv) The entering into any cooperative agreement.
 - (v) The extension, continuation renewal, amendment, or modification of any Federal contract or a subcontract under a Federal contract, grant, loan, or cooperative agreement.
 - (3) “Indian Tribe” and “tribal organization,” as used in this clause, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) and include Alaskan Natives.
 - (4) “Influencing or attempting to influence,” as used in this clause, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

NREL Appendix B-5

- (5) "Local government," as used in this clause, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.
- (6) "Officer or employee of an agency," as used in this clause, includes the following individuals who are employed by an agency:
 - (i) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
 - (ii) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
 - (iii) A special Government employee, as defined in section 202, Title 18, United States Code.
 - (iv) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.
- (7) "Person," as used in this clause, means an individual, corporation, company, association, authority, firm, partnership, society, state, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.
- (8) "Reasonable compensation," as used in this clause, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.
- (9) "Reasonable payment," as used in this clause, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.
- (10) "Recipient," as used in this clause, as used in this clause, includes the Subcontractor and all lower-tier Subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.
- (11) "Regularly employed," as used in this clause means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least one hundred thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than one hundred thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as

soon as he or she is employed by such person for one hundred thirty (130) working days.

- (12) "State," as used in this clause means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.
- (b) Prohibition. 31U.S.C. 1352, among other things, prohibits a recipient of a Federal contract, subcontract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31U.S.C. 1352 the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contract or the extension, continuation, renewal, amendment, or modification of this contract.
 - (1) The term appropriated funds does not include profit or fee from a covered Federal action.
 - (2) To the extent the Contractor or Subcontractor can demonstrate that the Contractor or Subcontractor has sufficient monies, other than Federal appropriated funds, NREL/Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.
- (c) Exceptions. The prohibition in paragraph (b) of this clause does not apply under the following conditions:
 - (1) Agency and legislative liaison by Contractor or Subcontractor employees.
 - (i) Payment of reasonable compensation made to an officer or employee of the Contractor or Subcontractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.
 - (ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—
 - (A) The qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities; or
 - (B) The application or adaptation of the person's products or services for an agency's use.
 - (iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action.
 - (iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.
 - (2) Professional and technical services.

NREL Appendix B-5

- (i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.
 - (ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
 - (iii) As used in paragraph (c) (2) of this clause, "professional and technical services" are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a) (2) (iii)).
 - (iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.
- (3) Only those communications and services expressly authorized by paragraphs (c) (1) and (2) of this clause are permitted.
- (d) Disclosure.
 - (1) If the Contractor or Subcontractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor or Subcontractor with respect to this contract, the Contractor or Subcontractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.
 - (2) If the Contractor or Subcontractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor or Subcontractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within thirty (30) days an updated disclosure using OMB Standard Form LLL.
- (e) Penalties.
 - (1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

NREL Appendix B-5

- (2) Contractors or Subcontractors may rely without liability on the representation made by their Subcontractors in the certification and disclosure form.
- (f) Cost allowability. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.
- (g) Subcontracts and/or Lower-tier Subcontracts.
 - (1) The Contractor or Subcontractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding \$100,000 under this subcontract. The Contractor or Subcontractor that awards the subcontract shall retain the declaration.
 - (2) A copy of each lower-tier Subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the Subcontractor, submit to the NREL Subcontract Administrator within thirty (30) days a copy of all disclosures. Each lower-tier Subcontractor certification shall be retained in the lower-tier subcontract file.
 - (3) The lower-tier Subcontractor shall include the substance of this clause, including this paragraph (g), in any lower-tier subcontract exceeding \$100,000.

Clause 9. PRINTED OR COPIED DOUBLE-SIDED ON RECYCLED PAPER (SPECIAL) (MAY 2003)

Derived from FAR 52.204-4 (AUG 2000)

(Applies to all subcontracts exceeding \$100,000.)

- (a) Definitions. As used in this clause—
 - (1) "Postconsumer material" means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material." For paper and paper products, postconsumer material means "postconsumer fiber" defined by the U.S. Environmental Protection Agency (EPA).
 - (2) "Printed or copied double-sided" means printing or reproducing a document so that information is on both sides of a sheet of paper.
- (b) When not using electronic commerce methods to submit information or data to NREL, the Subcontractor is encouraged to submit paper documents, such as offers, letters, or reports, that are printed or copied double-sided on recycled paper that meet a minimum thirty (30) percent postconsumer material standard.
- (c) If paper products, including high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, white wove envelopes, writing and office paper, and cover stock, meeting the recommended thirty (30) percent postconsumer material standard is not obtainable at a reasonable price or does not meet reasonable performance standards, the Subcontractor is encouraged to use paper containing no less than twenty (20) percent postconsumer material for use in submitting paper documents to NREL.

Clause 10. PROTECTING NREL'S/GOVERNMENT'S INTEREST WHEN SUBCONTRACTING AT ANY TIER WITH CONTRACTORS AND SUBCONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (SEP 2006)

Derived from FAR 52.209-6 (FD)

(Applies to all subcontracts with lower-tier subcontracts exceeding \$25,000)

- (a) The Government suspends or debar Contractors to protect the Government's interests. The Subcontractor shall not enter into any lower-tier subcontract in excess of \$30,000 with a lower-tier Subcontractor that is debarred, suspended, or proposed for debarment unless there is a compelling reason to do so.
- (b) The Subcontractor shall require each proposed lower-tier Subcontractor, whose lower-tier subcontract will exceed \$30,000, to disclose to the Subcontractor, in writing, whether as of the time of award of the lower-tier subcontract, the lower-tier Subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
- (c) A corporate officer or a designee of the Subcontractor shall notify the NREL Subcontract Administrator, in writing, before entering into a lower-tier subcontract with a party that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the Excluded Parties List System). The notice must include the following:
 - (1) The name of the lower-tier Subcontractor.
 - (2) The Subcontractor's knowledge of the reasons for the lower-tier Subcontractor being in the Excluded Parties List System.
 - (3) The compelling reason(s) for doing business with the lower-tier Subcontractor notwithstanding its inclusion in the Excluded Parties List System.
 - (4) The systems and procedures the Subcontractor has established to ensure that it is fully protecting NREL/Government's interests when dealing with such lower-tier Subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

Clause 11. AUDIT AND RECORDS NEGOTIATION (JUN 1999) AND ALTERNATE II (APR 1998)

Derived from FAR 52.215-2 (FD)

(Applies to all subcontracts exceeding \$100,000.)

(Alternate II applies to cost-type subcontracts with State and Local Governments, educational institutions, and other nonprofit organizations.)

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are written form, in the form of computer data, or in any other form.
- (b) Examination of Costs.
If this is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price redeterminable subcontract, or any combination of these, the Subcontractor shall maintain and the DOE Contracting Officer, or an authorized representative of the DOE Contracting Officer, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performance of this subcontract. This right of examination shall include inspection at all reasonable times of the Subcontractor's plants, or part of them, engaged in performing the subcontract.
- (c) Cost or pricing data.
If the Subcontractor has been required to submit cost or pricing data in connection

- with any pricing action relating to this subcontract, the DOE Contracting Officer, or an authorized representative of the DOE Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the Subcontractor's records, including computation and projections, related to—
- (1) The proposal for the subcontract, lower-tier subcontract, or modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the subcontract, lower-tier subcontract, or modification; or
 - (4) Performance of this subcontract, lower-tier subcontract, or modification.
- (d) Comptroller General.
- (1) The Comptroller General of the United States, or an authorized representative, shall have access to and the right to examine any of the Subcontractor's directly pertinent records involving transactions related to this subcontract or a lower-tier subcontract hereunder.
 - (2) This paragraph may not be construed to require the Subcontractor or lower-tier Subcontractor to create or maintain any record that the Subcontractor or lower-tier Subcontractor does not maintain in the ordinary course of business or pursuant to a provision of law.
- (e) Reports.
- If the Subcontractor is required to furnish cost, funding, or performance reports, the DOE Contracting Officer or any authorized representative of the DOE Contracting Officer, shall have the right to examine and audit the supporting records and materials, for the purpose of evaluating—
- (1) The effectiveness of the Subcontractor's policies and procedures to produce data compatible with the objectives of these reports; and
 - (2) The data reported.
- (f) Availability.
- The Subcontractor shall make available at its office at all reasonable times the records, materials, and other evidence described in paragraphs (a), (b), (c), (d), and (e) of this clause, for examination, audit, or reproduction, until three (3) years after final payment under this subcontract or for any shorter period specified in Subpart 4.7, Subcontractor Records Retention, of the Federal Acquisition Regulation (FAR), or for any longer period required by statute or by other clauses of this subcontract. In addition—
- (1) If this subcontract is completely or partially terminated, the records relating to the work terminated shall be made available for three (3) years after any resulting final termination settlement; and
 - (2) Records relating to appeals under the Disputes clause or to litigation or the settlement of claims arising under or relating to this subcontract shall be made available until such appeals, litigation, or claims are finally resolved.
- (g) The Subcontractor shall insert a clause containing all the terms of this clause, including this paragraph (g), in all lower-tier subcontracts under this subcontract that exceed the simplified acquisition threshold, and—
- (1) That are cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable type or any combination of these;
 - (2) For which cost or pricing data are required; or
 - (3) Require the lower-tier Subcontractor to furnish reports as discussed in paragraph (e) of this clause.

The clause may be altered only as necessary to identify properly the contracting parties and the DOE Contracting Officer or NREL Subcontract Administrator under the Government prime contract.

ALTERNATE II (APR 1998)

For cost-type subcontracts with State and Local Governments, educational institutions, and other non-profit organizations, the following paragraph (h) shall be added.

- (h) The provisions of OMB Circular No. A-133, "Audits of States, Local Governments, and Non-profit Organizations," apply to this subcontract.

Clause 12. NOTIFICATION OF CHANGE IN OWNERSHIP AND/OR NAME (SPECIAL) (OCT 2008)

Derived from FAR 52.215-19 (FD) (OCT 1997)

(Applies to all subcontracts.)

- (a) The Subcontractor shall make the following notifications in writing:
 - (1) When the Subcontractor becomes aware that a change in its ownership or name has occurred, or is certain to occur, the Subcontractor shall provide such notification in accordance with NREL's novation and name change procedures.
 - (2) When a change that could result in changes in the valuation of the Subcontractor's capitalized assets in the accounting records or any other asset valuations or cost changes, the Subcontractor shall provide such notification to the NREL Subcontract Administrator within 30 days.
- (b) In the event of change in ownership, the Subcontractor shall—
 - (1) Maintain current, accurate, and complete inventory records of assets and their costs.
 - (2) Provide the NREL Subcontract Administrator or designated representative ready access to the records upon request;
 - (3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Subcontractor's ownership changes; and
 - (4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Subcontractor ownership change.
- (c) The Subcontractor shall include the substance of this clause in all lower-tier subcontracts where it is contemplated that cost or pricing data will be required or for which any pre-award or post-award cost determination is subject to FAR 31.2, cost principles and procedures applicable to commercial organizations. The Subcontractor shall notify the NREL Subcontract Administrator of the change in ownership or name of any lower-tier Subcontractor subject to the terms of this clause.

Clause 13. UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)

Derived from FAR 52.219-8 (FD)

(Applies to all subcontracts exceeding \$100,000.)

- (a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns,

HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing subcontracts let by any Federal agency, including subcontracts and lower-tier subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors and Subcontractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

- (b) The Subcontractor hereby agrees to carry out this policy in the awarding of lower-tier subcontracts to the fullest extent consistent with efficient contract performance. The Subcontractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Subcontractor's compliance with this clause.
- (c) Definitions. As used in this subcontract—
 - (1) "HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
 - (2) "Service-disabled veteran-owned small business concern"—
 - (i) Means a small business concern—
 - (A) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
 - (B) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.
 - (3) "Service-disabled veteran" means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).
 - (4) "Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
 - (5) "Small disadvantaged business concern" means a small business concern that represents, as part of its offer that—
 - (i) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, Subpart B;
 - (ii) No material change in disadvantaged ownership and control has occurred since its certification;
 - (iii) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
 - (iv) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).
 - (6) "Veteran-owned small business concern" means a small business concern—

NREL Appendix B-5

- (i) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
 - (ii) The management and daily business operations of which are controlled by one or more veterans.
- (7) "Women-owned small business concern" means a small business concern—
 - (i) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
 - (ii) Whose management and daily business operations are controlled by one or more women.
- (d) Subcontractors acting in good faith may rely on written representations by their lower-tier Subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

Clause 14. CONVICT LABOR (JUN 2003)

Derived from FAR 52.222-3

(Applies to All Subcontracts)

- (a) Except as provided in paragraph (b) of this clause, the Subcontractor shall not employ in the performance of this contract any person undergoing a sentence of imprisonment imposed by any court of a State, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands.
- (b) The Subcontractor is not prohibited from employing persons—
 - (1) On parole or probation to work at paid employment during the term of their sentence;
 - (2) Who have been pardoned or who have served their terms; or
 - (3) Confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, or the U.S. Virgin Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—
 - (i) The worker is paid or is in an approved work training program on a voluntary basis;
 - (ii) Representatives of local union central bodies or similar labor union organizations have been consulted;
 - (iii) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;
 - (iv) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and
 - (v) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

Clause 15. WALSH-HEALEY PUBLIC CONTRACTS ACT (DEC 1996)

Derived from FAR 52.222-20

(Applies to all subcontracts exceeding \$10,000 for manufacturing or furnishing of materials, supplies, articles or equipment subject to the Walsh Healey Public Contracts Act.)

If this contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$10,000, and is subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 35-45), the following terms and conditions apply:

- (a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.
- (b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 40).

Clause 16. PROHIBITION OF SEGREGATED FACILITIES (FEB 1999)

Derived from FAR 52.222-21 (FD)

(Applies to subcontracts where the "Equal Opportunity Clause" is applicable.)

- (a) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.
- (b) The Subcontractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Subcontractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
- (c) The Subcontractor shall include this clause in every lower-tier subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

Clause 17. EQUAL OPPORTUNITY (MAR 2007)

Derived from FAR 52.222-26 (FD)

(Applies to all subcontracts unless exempt from Executive Order 11246 (See FAR 22.807(a).)

- (a) Definition. "United States," as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.
- (b) (1) If, during any twelve (12) month period (including the twelve (12) months preceding the award of this subcontract), the Subcontractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an

NREL Appendix B-5

aggregate value in excess of \$10,000, the Subcontractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Subcontractor shall provide information necessary to determine the applicability of this clause.

If the Subcontractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Subcontractor's activities (41 CFR 60-1.5).

- (c) (1) The Subcontractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Subcontractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5. The Subcontractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to—
 - (i) Employment;
 - (ii) Upgrading;
 - (iii) Demotion;
 - (iv) Transfer;
 - (v) Recruitment or recruitment advertising;
 - (vi) Layoff or termination;
 - (vii) Rates of pay or other forms of compensation; and
 - (viii) Selection for training, including apprenticeship.
- (2) The Subcontractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the NREL Subcontract Administrator that explain this clause.
- (3) The Subcontractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Subcontractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (4) The Subcontractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the NREL Subcontract Administrator advising the labor union or workers' representative of the Subcontractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Subcontractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (6) The Subcontractor shall furnish to NREL all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Subcontractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Subcontractor has filed within the twelve (12) months preceding the date of subcontract award, the Subcontractor shall, within thirty (30) days after subcontract award, apply to either the regional Office of Federal Contract

- Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
- (7) The Subcontractor shall permit access to its premises, during normal business hours, by NREL/Government or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Subcontractor shall permit the NREL/Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
 - (8) If the OFCCP determines that the Subcontractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this subcontract may be canceled, terminated, or suspended in whole or in part and the Subcontractor may be declared ineligible for further NREL subcontracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Subcontractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.
 - (9) The Subcontractor shall include the terms and conditions of this clause in every lower-tier subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each Subcontractor or vendor.
 - (10) The Subcontractor shall take such action with respect to any lower-tier subcontract or purchase order as the NREL Subcontract Administrator may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Subcontractor becomes involved in, or is threatened with, litigation with a lower-tier Subcontractor or vendor as a result of any direction, the Subcontractor may request the United States to enter into the litigation to protect the interests of the United States.
- (d) Notwithstanding any other clause in this subcontract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

Clause 18. AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (SEP 2006)

Derived from FAR 52.222-35 (FD)

(Applies to all subcontracts exceeding \$100,000.)

- (a) Definitions. As used in this clause—
 - (1) “All employment openings” means all positions except executive and top management, those positions that will be filled from within the Subcontractor’s organization, and positions lasting three (3) days or less. This term includes full-time employment, temporary employment of more than three (3) days duration, and part-time employment.
 - (2) “Executive and top management” means any employee—
 - (i) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;

NREL Appendix B-5

- (ii) Who customarily and regularly directs the work of two (2) or more other employees;
 - (iii) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;
 - (iv) Who customarily and regularly exercises discretionary powers; and
 - (v) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.
- (3) "Other eligible veteran" means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.
- (4) "Positions that will be filled from within the Subcontractor's organization" means employment openings for which the Subcontractor will give no consideration to persons outside the Subcontractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Subcontractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.
- (5) "Qualified special disabled veteran" means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.
- (6) "Special disabled veteran" means—
 - (i) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability—
 - (A) Rated at 30 percent or more; or
 - (B) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (i.e., a significant impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or
 - (ii) A person who was discharged or released from active duty because of a service-connected disability.
- (7) "Veteran of the Vietnam era" means a person who—
 - (i) Served on active duty for a period of more than one hundred eighty (180) days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—
 - (A) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or

NREL Appendix B-5

- (B) Between August 5, 1964, and May 7, 1975, in all other cases;
or
 - (ii) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—
 - (A) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
 - (B) Between August 5, 1964, and May 7, 1975, in all other cases.
 - (b) General.
 - (1) The Subcontractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Subcontractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as—
 - (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
 - (iii) Rate of pay or any other form of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (v) Leaves of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
 - (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the Subcontractor including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
 - (2) The Subcontractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).
 - (c) Listing openings.
 - (1) The Subcontractor shall immediately list all employment openings that exist at the time of the execution of this subcontract and those which occur during the performance of this subcontract, including those not generated by this subcontract, and including those occurring at an establishment of the Subcontractor other than the one where the subcontract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.
 - (2) The Subcontractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing

- a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Subcontractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
- (3) Whenever the Subcontractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Subcontractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts/subcontracts. The Subcontractor may advise the State agency when it is no longer bound by this subcontract clause.
- (d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.
- (e) Postings.
- (1) The Subcontractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.
- (2) The employment notices shall—
- (i) State the rights of applicants and employees as well as the Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and
- (ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor).
- (3) The Subcontractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Subcontractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).
- (4) The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Subcontractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.
- (f) Noncompliance. If the Subcontractor does not comply with the requirements of this clause, appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- (g) Lower-tier subcontracts. The Subcontractor shall insert the terms of this clause in all lower-tier subcontracts or purchase orders of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Subcontractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

Clause 19. AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (JUN 1998)

Derived from FAR 52.222-36 (FD)

(Applies to all subcontracts exceeding \$10,000.)

(a) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Subcontractor shall not discriminate against any employee or applicant because of physical or mental disability. The Subcontractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—
 - (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (iii) Rates of pay or any other form of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
 - (v) Leaves of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Subcontractor;
 - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the Subcontractor, including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
- (2) The Subcontractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C.793) (the Act), as amended.

(b) Postings.

- (1) The Subcontractor agrees to post employment notices stating—
 - (i) The Subcontractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
 - (ii) The rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Subcontractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., the Subcontractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary).
- (3) The Subcontractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Subcontractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.

(c) Noncompliance.

If the Subcontractor does not comply with the requirements of this clause,

appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) Lower-tier Subcontracts.

The Subcontractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Subcontractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

Clause 20. EMPLOYMENT REPORTS ON DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (SEP 2006)

Derived from FAR 52.222-37 (FD)

(Applies to all subcontracts exceeding \$100,000.)

- (a) Unless the Subcontractor is a State or local government agency, the Subcontractor shall report at least annually, as required by the Secretary of Labor, on—
 - (1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Subcontractor by job category and hiring location; and
 - (2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and
 - (3) The maximum number and the minimum number of employees of the Subcontractor during the period covered by the report.
- (b) The Subcontractor shall report the above items by completing the Form VETS-100, entitled “Federal Contractor Veterans’ Employment Report (VETS-100 Report).”
- (c) The Subcontractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.
- (d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent twelve (12) month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Subcontractors may select an ending date—
 - (1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or
 - (2) As of December 31, if the Subcontractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).
- (e) The Subcontractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Subcontractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Subcontractor. The invitation shall state that—
 - (1) The information is voluntarily provided;
 - (2) The information will be kept confidential;
 - (3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and
 - (4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

- (f) The Subcontractor shall insert the terms of this clause in all lower-tier subcontracts or purchase orders of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

Clause 21. DRUG-FREE WORKPLACE (MAY 2001)

Derived from FAR 52-223-6 (FD)

(Applies to all subcontracts where work is to be performed on NREL operated facilities, including Government-owned or - leased property.)

- (a) Definitions.
 - (1) "Controlled substance," as used in this clause, means a controlled substance in subcontract schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.
 - (2) "Conviction," as used in this clause, means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.
 - (3) "Criminal drug statute," as used in this clause, means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.
 - (4) "Drug-free workplace," as used in this clause, means the NREL-operated site(s) for the performance of work done by the Subcontractor in connection with a specific subcontract where employees of the Subcontractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.
 - (5) "Employee," as used in this clause, means an employee of a Subcontractor directly engaged in the performance of work under a NREL subcontract. "Directly engaged" is defined to include all direct cost employees and any other Subcontractor employee who has other than a minimal impact or involvement in subcontract performance.
 - (6) "Individual," as used in this clause, means a Subcontractor that has no more than one employee including the Subcontractor.
- (b) The Subcontractor, if other than an individual, shall—within thirty (30) days after award (unless a longer period is agreed to in writing for subcontracts of thirty (30) days or more performance duration), or as soon as possible for subcontracts of less than thirty (30) days performance duration—
 - (1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Subcontractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;
 - (2) Establish an ongoing drug-free awareness program to inform such employees about—
 - (i) The dangers of drug abuse in the workplace;
 - (ii) The Subcontractor's policy of maintaining a drug-free workplace;
 - (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

NREL Appendix B-5

- (3) Provide all employees engaged in performance of the Subcontract with a copy of the statement required by subparagraph (b)(1) of this clause;
- (4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this Subcontract, the employee will—
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than five (5) days after such conviction;
- (5) Notify the NREL Subcontract Administrator in writing within ten (10) days after receiving notice under subdivision (b) (4) (ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;
- (6) Within thirty (30) days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:
 - (i) Taking appropriate personnel action against such employee, up to and including termination; or
 - (ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency; and
 - (iii) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b) (1) through (b) (6) of this clause.
- (c) The Subcontractor, if an individual, agrees by award of the subcontract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this subcontract.
- (d) In addition to other remedies available to the NREL and the Government, the Subcontractor's failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Subcontractor subject to suspension of subcontract payments, termination of the subcontract or default, and suspension or debarment."

Clause 22. ENERGY EFFICIENCY IN ENERGY-CONSUMING PRODUCTS (SPECIAL) (OCT 2008)

Derived from FAR 52.223-15 (DEC 2007) (FD)

(Applies to subcontracts where energy consuming products will be delivered, acquired, or furnished for (i) use by the Subcontractor or NREL on DOE-owned or -leased facilities or (ii) construction, renovation, or maintenance of DOE-owned or -leased facilities.)

- (a) Definition. As used in this clause—
 - (1) "Energy-efficient product"—
 - (i) Means a product that—
 - (A) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or
 - (ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

- (2) [Reserved.]
- (b) The Subcontractor shall ensure that energy-consuming products are energy efficient products (i.e., ENERGY STAR® products or FEMP-designated products) at the time of subcontract award, for products that are—
 - (1) Delivered;
 - (2) Acquired by the Subcontractor for use in performing services at a DOE-owned or -leased facility;
 - (3) Furnished by the Subcontractor for use by NREL/Government; or
 - (4) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.
- (c) The requirements of paragraph (b) apply to the Subcontractor (including any lower-tier Subcontractor) unless—
 - (1) The energy-consuming product is not listed in the ENERGY STAR® Program or FEMP; or
 - (2) Otherwise approved in writing by the NREL Subcontract Administrator.
- (d) Information about these products is available for—
 - (1) ENERGY STAR® at <http://www.energystar.gov/products>; and
 - (2) FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html.

Clause 23. RESTRICTIONS ON CERTAIN FOREIGN PURCHASES (JUN 2008)

Derived from FAR 52.225-13 (FD)

(Applies to all subcontracts exceeding \$2,500.)

- (a) Except as authorized by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury, the Subcontractor shall not acquire, for use in the performance of this subcontract, any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.
- (b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea, into the United States or its outlying areas. Lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/ofac/sdn>. More information about these restrictions, as well as updates, is available in the OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.
- (c) The Subcontractor shall insert this clause, including this paragraph (c), in all lower-tier subcontracts.

Clause 24. INSURANCE - WORK ON A GOVERNMENT INSTALLATION (SPECIAL-CONSTRUCTION) (JUL 2008)

Derived from FAR 52.228-5c (JAN 1997)

(Applies to all construction subcontracts except design-build subcontracts.)

- (a) The Subcontractor shall, at its own expense, provide and maintain during the entire performance period of this Subcontract at least the kinds and minimum amounts of insurance required in this clause.

NREL Appendix B-5

- (b) The U.S. Department of Energy and the Alliance for Sustainable Energy, LLC, their officers, employees, and agents shall be listed as additional insured in all policies of insurance issued to the Subcontractor in furtherance of performance of work under this subcontract when such listing is appropriate to the type of policy issued.

Insurance Type	Bodily Injury		Property Damage
	Each Person	Each Occurrence	
Workers' Compensation	As Required by Law	As Required by Law	N/A
Employer's Liability	\$1,000,000.00	\$1,000,000.00	N/A
General Liability	\$1,000,000.00	\$1,000,000.00	\$1,000,000.00
Automobile Liability	\$2,000,000.00	\$1,000,000.00	\$1,000,000.00
"All Risk" Builder's Risk	100% Structure and Material Value (Subcontractor is responsible for any deductible)	100% Structure and Material Value (Subcontractor is responsible for any deductible)	N/A

Clause 25. FEDERAL, STATE, AND LOCAL TAXES (APR 2003)

Derived from FAR 52.229-3

(Applies to competitive fixed price subcontracts exceeding \$100,000.)

- (a) Definitions, as used in this clause—
- (1) "After-imposed Federal tax" means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract period, on the transactions or property covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the subcontract date. It does not include social security tax or other employment taxes.
 - (2) "After-relieved Federal tax" means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this subcontract, but which the Subcontractor is not required to pay or bear, or for which the Subcontractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.
 - (3) "All applicable Federal, State, and local taxes and duties" means all taxes and duties, in effect on the subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract.
 - (4) "Subcontract date" means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of this subcontract or modification.
 - (5) "Local taxes" includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the subcontract is performed wholly or partly in any of those areas.

NREL Appendix B-5

- (b) The subcontract price includes all applicable Federal, State, and local taxes and duties.
- (c) The subcontract price shall be increased by the amount of any after-imposed Federal tax, provided the Subcontractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the subcontract price, as a contingency reserve or otherwise.
- (d) The subcontract price shall be decreased by the amount of any after-relieved Federal tax.
- (e) The subcontract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Subcontractor is required to pay or bear, or does not obtain a refund of, through the Subcontractor's fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator.
- (f) No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds \$250.
- (g) The Subcontractor shall promptly notify the NREL Subcontract Administrator of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as the NREL Subcontract Administrator directs.
- (h) The Government through NREL shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Subcontractor requests such evidence and a reasonable basis exists to sustain the exemption.

Clause 26. TAXES--FOREIGN FIXED PRICE SUBCONTRACTS (JUN 2003)

Derived from FAR 52.229-6

(Applies to fixed price subcontracts exceeding \$100,000 performed wholly or partly in a foreign country.)

- (a) To the extent that this subcontract provides for furnishing supplies or performing services outside the United States and its outlying areas, this clause applies in lieu of any Federal, State, and local taxes clause of the subcontract.
- (b) Definitions, as used in this clause—
 - (1) "Subcontract date" means the date set for bid opening or, if this is a negotiated subcontract or a modification, the effective date of this subcontract or modification.
 - (2) "Tax and "taxes" include fees and charges for doing business that are levied by the government of the country concerned or by its political subdivisions.
 - (3) "All applicable taxes and duties" means all taxes and duties, in effect on the subcontract date, that the taxing authority is imposing and collecting on the transactions or property covered by this subcontract, pursuant to written ruling or regulation in effect on the subcontract date.
 - (4) "After-imposed tax" means any new or increased tax or duty, or tax that was exempted or excluded on the subcontract date but whose exemption was later revoked or reduced during the subcontract period, other than excepted tax, on the transactions or property covered by this subcontract that the Subcontractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the subcontract date.
 - (5) "After-relieved tax" means any amount of tax or duty, other than an excepted tax, that would otherwise have been payable on the transactions or property covered by this subcontract, but which the Subcontractor is not required to

pay or bear, or for which the Subcontractor obtains a refund, as the result of legislative, judicial, or administrative action taking effect after the subcontract date.

- (6) Excepted tax” means social security or other employment taxes, net income and franchise taxes, excess profits taxes, capital stock taxes, transportation taxes, unemployment compensation taxes, and property taxes. “Excepted tax” does not include gross income taxes levied on or measured by sales or receipts from sales, property taxes assessed on completed supplies covered by this subcontract, or any tax assessed on the Subcontractor’s possession of, interest in, or use of property, title to which is in the U.S. Government
- (c) Unless otherwise provided in this subcontract, the subcontract price includes all applicable taxes and duties, except taxes and duties that the Government of the United States and the government of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.
- (d) The subcontract price shall be increased by the amount of any after-imposed tax or of any tax or duty specifically excluded from the subcontract price by a provision of this subcontract that the Subcontractor is required to pay or bear, including any interest or penalty, if the Subcontractor states in writing that the subcontract price does not include any contingency for such tax and if liability for such tax, interest, or penalty was not incurred through the Subcontractor’s fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator or to comply with the provisions of paragraph (l) of this clause.
- (e) The subcontract price shall be decreased by the amount of any after-relieved tax, including any interest or penalty. The Government of the United States/NREL shall be entitled to interest received by the Subcontractor incident to a refund of taxes to the extent that such interest was earned after the Subcontractor was paid by NREL for such taxes. The Government of the United States/NREL shall be entitled to repayment of any penalty refunded to the Subcontractor to the extent that the penalty was paid by NREL.
- (f) The subcontract price shall be decreased by the amount of any tax or duty, other than an excepted tax, that was included in the subcontract and that the Subcontractor is required to pay or bear, or does not obtain a refund of, through the Subcontractor’s fault, negligence, or failure to follow instructions of the NREL Subcontract Administrator or to comply with the provisions of paragraph (l) of this clause.
- (g) No adjustment shall be made in the subcontract price under this clause unless the amount of the adjustment exceeds \$250.
- (h) If the Subcontractor obtains a reduction in tax liability under the United States Internal Revenue Code (Title 26, U.S. Code) because of the payment of any tax or duty that either was included in the subcontract price or was the basis of an increase in the subcontract price, the amount of the reduction shall be paid or credited to the Government of the United States/NREL as the NREL Subcontract Administrator directs.
- (i) The Subcontractor shall take all reasonable action to obtain exemption from or refund of any taxes or duties, including interest or penalty, from which the United States Government, NREL, the Subcontractor, any lower-tier Subcontractor, or the transactions or property covered by this subcontract are exempt under the laws of the country concerned or its political subdivisions or which the governments of the United States and of the country concerned have agreed shall not be applicable to expenditures in such country by or on behalf of the United States.

- (j) The Subcontractor shall promptly notify the NREL Subcontract Administrator of all matters relating to taxes or duties that reasonably may be expected to result in either an increase or decrease in the subcontract price and shall take appropriate action as the NREL Subcontract Administrator directs. The subcontract price shall be equitably adjusted to cover the costs of action taken by the Subcontractor at the direction of the NREL Subcontract Administrator, including any interest, penalty, and reasonable attorneys' fees.

Clause 27. ASSIGNMENT OR TRANSFER (SPECIAL) (OCT 2008)

Derived from 52.232-24 (JAN 1986)

(Applies to all subcontracts.)

- (a) Except as expressly authorized in writing by the NREL Subcontract Administrator, this subcontract or any interest therein or claim under this subcontract shall not be assigned or transferred by the Subcontractor.
- (b) In the event of any authorization of assignment or transfer, the parties shall file written notice together with a true copy of the instrument of the assignment or transfer with the NREL Subcontract Administrator. Such assignment or transfer shall cover all amounts payable under the subcontract not already paid, shall not be made to more than one party, and shall not be subject to further assignment or transfers.
- (c) When directed by DOE, the Prime Contractor, may assign or transfer all its rights and obligations under this subcontract to DOE or its designee.

Clause 28. DESIGN WITHIN FUNDING LIMITATIONS (APR 1984)

Derived from FAR 52.236-22

(Applies to architect-engineer subcontracts.)

- (a) The Subcontractor shall accomplish the design services required under this subcontract so as to permit the award of a subcontract, using standard Federal Acquisition Regulation procedures for the construction of the facilities designed at a price that does not exceed the estimated construction subcontract price as set forth in the subcontract schedule or the Statement of Work. When bids or proposals for the construction subcontract are received that exceed the estimated price, the Subcontractor shall perform such redesign(s) and other services as are necessary to permit subcontract award within the funding limitation. These additional services shall be performed at no increase in the price of this subcontract. However, the Subcontractor shall not be required to perform such additional services at no cost to NREL if the unfavorable bids or proposals are the result of conditions beyond its reasonable control.
- (b) The Subcontractor will promptly advise the NREL Subcontract Administrator if it finds that the project being designed will exceed or is likely to exceed the funding limitations and it is unable to design a usable facility within these limitations. Upon receipt of such information, the NREL Subcontract Administrator will review the Subcontractor's revised estimate of construction cost. NREL may, if it determines that the estimated construction subcontract price set forth in this subcontract is so low that award of a construction subcontract not in excess of such estimate is improbable, authorize a change in scope or materials as required to reduce the estimated construction cost to an amount within the estimated construction subcontract price set forth in the subcontract schedule, or NREL may adjust such

estimated construction subcontract price. When bids or proposals are not solicited or are unreasonably delayed, NREL shall prepare an estimate of constructing the design submitted and such estimate shall be used in lieu of bids or proposals to determine compliance with the funding limitation.

Clause 29. RESPONSIBILITY OF THE ARCHITECT-ENGINEER SUBCONTRACTOR (APR 1984)

Derived from FAR 52.236-23

(Applies to architect-engineer subcontracts.)

- (a) The Subcontractor shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other services furnished by the Subcontractor under this subcontract. The Subcontractor shall, without additional compensation, correct or revise any errors or deficiencies in its designs, drawings, specifications, and other services.
- (b) Neither NREL's review, approval or acceptance of, nor payment for, the services required under this subcontract shall be construed to operate as a waiver of any rights under this subcontract or of any cause of action arising out of the performance of this subcontract, and the Subcontractor shall be and remain liable to NREL/Government in accordance with applicable law for all damages to NREL/Government caused by the Subcontractor's negligent performance of any of the services furnished under this subcontract.
- (c) The rights and remedies of NREL/Government provided for under this subcontract are in addition to any other rights and remedies provided by law.
- (d) If the Subcontractor is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

Clause 30. WORK OVERSIGHT IN ARCHITECT-ENGINEER SUBCONTRACTS (APR 1984)

Derived from FAR 52.236-24

(Applies to architect-engineer subcontracts.)

The extent and character of the work to be done by the Subcontractor shall be subject to the general oversight, supervision, direction, control, and approval of the NREL Subcontract Administrator.

Clause 31. REQUIREMENTS FOR REGISTRATION OF DESIGNERS (JUN 2003)

Derived from FAR 52.236-25

(Applies to architect-engineer subcontracts.)

Architects or engineers registered to practice in the particular professional field involved in a State, the District of Columbia, or an outlying area of the United States shall prepare or review and approve the design of architectural, structural, mechanical, electrical, civil, or other engineering features of the work.

Clause 32. PROTECTION OF NREL/GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)

Derived from FAR 52.237-2

(Applies to service subcontracts not involving construction to be performed on Government-owned or -leased facility.)

The Subcontractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on NREL/Government installation. If the Subcontractor's failure to use reasonable care causes damage to any of this property, the Subcontractor shall replace or repair the damage at no expense to NREL/Government as the NREL Subcontract Administrator directs. If the Subcontractor fails or refuses to make such repair or replacement, the Subcontractor shall be liable for the cost, which may be deducted from the subcontract price.

Clause 33. BANKRUPTCY (JUL 1995)

Derived from FAR 52.242-13

(Applies to all subcontracts.)

In the event the Subcontractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Subcontractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the NREL Subcontract Administrator responsible for administering the subcontract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of other NREL subcontract numbers and Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this subcontract.

Clause 34. SUSPENSION OF WORK (APR 1984)

Derived from FAR 52.242-14

(Applies to construction and architect-engineer subcontracts.)

- (a) The NREL Subcontract Administrator may order the Subcontractor, in writing, to suspend, delay, or interrupt all or any part of the work of this subcontract for the period of time that the NREL Subcontract Administrator determines appropriate for the convenience of NREL/Government.
- (b) If the performance of all or any part of the work is, for any unreasonable period of time, suspended, delayed, or interrupted—
 - (1) By an act of the NREL Subcontract Administrator in the administration of this subcontract; or
 - (2) By the NREL Subcontract Administrator's failure to act within the time specified in this subcontract (or within a reasonable time if not specified), an adjustment shall be made for any increase in the cost of performance of this subcontract (excluding profit) necessarily caused by the unreasonable suspension, delay, or interruption, and the subcontract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Subcontractor, or for which an equitable adjustment

is provided for or excluded under any other term or condition of this subcontract.

- (c) A claim under this clause shall not be allowed—
 - (1) For any costs incurred more than twenty (20) days before the Subcontractor shall have notified the NREL Subcontract Administrator in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and
 - (2) Unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of the suspension, delay, or interruption, but not later than the date of final payment under the subcontract.

Clause 35. STOP WORK ORDER (AUG 1989) AND ALTERNATE 1 - COST REIMBURSEMENT (APR 1984)

Derived from FAR 52.242-15

(Applies to all subcontracts.)

(Alternate 1 applies to cost-type subcontracts.)

- (a) The NREL Subcontract Administrator may, at any time, by written order to the Subcontractor, require the Subcontractor to stop all or any part of the work called for by this subcontract for a period of ninety (90) days after the order is delivered to the Subcontractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Subcontractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop-work is delivered to the Subcontractor, or within any extension of that period to which the parties shall have agreed, the NREL Subcontract Administrator shall either—
 - (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Default or the Termination clause of this subcontract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Subcontractor shall resume work. The NREL Subcontract Administrator shall make an equitable adjustment and the subcontract shall be modified, in writing, accordingly, if—
 - (1) The stop-work order results in an increase in the time required for, or in the Subcontractor's cost properly allocable to, the performance of any part of this subcontract; and
 - (2) The Subcontractor asserts its right to the adjustment within thirty (30) days after the end of the period of work stoppage provided that, if the NREL Subcontract Administrator decides the facts justify the action, the NREL Subcontract Administrator may receive and act upon the claim submitted at any time before final payment under this subcontract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of NREL/Government, the NREL Subcontract Administrator shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the NREL Subcontract Administrator shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

ALTERNATE I (APR 1984)

If this clause is inserted in a cost reimbursement subcontract, substitute in paragraph (a) (2) the words, "the Termination clause of this subcontract" for the words "the Default, or the Termination for Convenience of NREL/Government clause of this subcontract." In paragraph (b) substitute the words "an equitable adjustment in the delivery subcontract schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the subcontract that may be affected" for the words, "an equitable adjustment in the delivery subcontract schedule or subcontract price, or both."

Clause 36. CHANGES - FIXED PRICE (AUG 1987) AND ALTERNATES I THROUGH V (APR 1984)

Derived from FAR 52.243-1

(Applies to fixed price subcontracts.)

(Alternate I applies to subcontracts for services where no supplies are to be furnished--other than architect-engineer or other professional services subcontracts.)

(Alternate II applies to subcontracts for services where supplies are to be furnished--other than architect-engineer services, transportation, or research and development.)

(Alternate III applies to subcontracts for architect-engineer or other professional services.)

(Alternate IV applies to subcontracts for transportation services.)

(Alternate V applies to fixed price research and development subcontracts.)

- (a) The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.).
 - (3) Place of performance of the services.
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for NREL/Government, in accordance with the drawings, designs, or specifications.
 - (5) Method of shipment or packing or supplies.
 - (6) Place of delivery.
- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this subcontract, whether or not changed by the order, the NREL Subcontract Administrator shall make an equitable adjustment in the subcontract price, the delivery subcontract schedule, or both, and shall modify the subcontract.
- (c) The Subcontractor must assert its right to an adjustment under this clause within thirty (30) days from the date of receipt of the written order. However, if the NREL Subcontract Administrator decides that the facts justify it, the NREL Subcontract Administrator may receive and act upon a proposal submitted before final payment of the subcontract.
- (d) If the Subcontractor's proposal includes the cost of property made obsolete or excess by the change, the NREL Subcontract Administrator shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Subcontractor from proceeding with the subcontract as changed.

ALTERNATE I (APR 1984)

If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, substitute the following paragraph (a) in the basic clause:

- (a) The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.).
 - (3) Place of performance of the services.

ALTERNATE II (APR 1984)

If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, substitute the following paragraph (a) in the basic clause:

- (b) The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
 - (1) Description of services to be performed.
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.).
 - (3) Place of performance of the services.
 - (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for NREL/Government, in accordance with the drawings, designs, or specifications.
 - (5) Method of shipment or packing of supplies.
 - (6) Place of delivery.

ALTERNATE III (APR 1984)

If the requirement is for architect-engineer or other professional services, substitute the following paragraph (a) in the basic clause and add the following paragraph (f):

- (c) The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in the services to be performed.
* * * * *
- (f) No services for which an additional cost or fee will be charged by the Subcontractor shall be furnished without the prior written authorization of the NREL Subcontract Administrator.

ALTERNATE IV (APR 1984)

If the requirement is for transportation services, substitute the following paragraph (a) in the basic clause.

- (g) The NREL Subcontract Administrator may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this subcontract in any one or more of the following:
 - (1) Specifications.
 - (2) Work or services.
 - (3) Place of origin.
 - (4) Place of delivery.
 - (5) Tonnage to be shipped.
 - (6) Amount of Government furnished property.

ALTERNATE V (APR 1984)

If the requirement is for fixed price research and development, substitute the following subparagraphs (a) (1) and (a) (3) and paragraph (b) in the basic clause.

- (h) * * * *

- (1) Drawings, designs, or specifications.
* * * * *
- (3) Place of inspection, delivery, or acceptance.
- (i) If any such change causes an increase or decrease in the cost of, or time required for, performing this subcontract, whether or not changed by the order, the NREL Subcontract Administrator shall make an equitable adjustment in—
 - (1) The subcontract price, the time of performance, or both; and
 - (2) Other affected terms of the subcontract, and shall modify the subcontract accordingly.

Clause 37. LOWER-TIER SUBCONTRACTS (JUN 2007) INCORPORATING ALTERNATE I (JUN 2007)

Derived from FAR 52.244-2

(Applies to all cost type subcontracts. Applies to letter, fixed price, time and material, and labor hour subcontracts exceeding \$100,000.)

- (a) Definitions.
 - (1) "Approved purchasing system," as used in this clause, means a Subcontractor's purchasing system that has been reviewed and approved in accordance with Part 44 of the Federal Acquisition Regulation (FAR).
 - (2) "Consent to lower-tier subcontract," as used in this clause, means the NREL Subcontract Administrator's written consent for the Subcontractor to enter into a particular lower-tier subcontract.
 - (3) "Lower-tier subcontract," as used in this clause, means any contract, as defined in FAR Subpart 2.1, entered into by a lower-tier Subcontractor to furnish supplies or services for performance of the prime contract or a lower-tier subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.
- (b) When this clause is included in a fixed price type subcontract, consent to lower-tier subcontracts is required only on unpriced subcontract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.
- (c) If the Subcontractor does not have an approved purchasing system, consent to lower-tier subcontract is required for any lower-tier subcontract that—
 - (1) Is of the cost reimbursement, time and materials, or labor hour type; or
 - (2) Is fixed price and exceeds—
 - (i) For a subcontract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold (\$100,000) or five (5) percent of the total estimated cost of the subcontract; or
 - (ii) For subcontracts awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold (\$100,000) or five (5) percent of the total estimated cost of the subcontract.
- (d) If the Subcontractor has an approved purchasing system, the Subcontractor nevertheless shall obtain the NREL Subcontract Administrator's written consent before placing any of the lower-tier subcontracts identified in the subcontract schedule.
- (e) (1) The Subcontractor shall notify the NREL Subcontract Administrator reasonably in advance of placing any lower-tier subcontract or modification

thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

- (i) A description of the supplies or services to be lower-tier subcontracted.
- (ii) Identification of the type of lower-tier subcontract to be used.
- (iii) Identification of the proposed lower-tier Subcontractor.
- (iv) The proposed lower-tier subcontract price.
- (v) The lower-tier Subcontractor's current, complete, and accurate cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other subcontract provisions.
- (vi) The lower-tier Subcontractor's Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this subcontract.
- (vii) A negotiation memorandum reflecting—
 - (A) The principal elements of the lower-tier subcontract price negotiations;
 - (B) The most significant considerations controlling establishment of initial or revised prices;
 - (C) The reason cost or pricing data were or were not required;
 - (D) The extent, if any, to which the Subcontractor did not rely on the lower-tier Subcontractor's cost or pricing data in determining the price objective and in negotiating the final price;
 - (E) The extent to which it was recognized in the negotiation that the lower-tier Subcontractor's cost or pricing data were not accurate, complete, or current; the action taken by the Subcontractor and the lower-tier Subcontractor; and the effect of any such defective data on the total price negotiated;
 - (F) The reasons for any significant difference between the Subcontractor's price objective and the price negotiated; and
 - (G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.
- (2) If the Subcontractor has an approved purchasing system and consent is not required under paragraph (c), or (d) of this clause, the Subcontractor nevertheless shall notify the NREL Subcontract Administrator reasonably in advance of entering into any:
 - (i) cost-plus-fixed-fee subcontract, or
 - (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (e) (1) (i) through (e) (1) (iv) of this clause.
- (f) Unless the consent or approval specifically provides otherwise, neither consent by the NREL Subcontract Administrator to any subcontract nor approval of the Subcontractor's purchasing system shall constitute a determination—
 - (1) Of the acceptability of any subcontract terms or conditions;
 - (2) Of the allowability of any cost under this subcontract; or
 - (3) To relieve the Subcontractor of any responsibility for performing this subcontract.

NREL Appendix B-5

- (g) No lower-tier subcontract or modification thereof placed under this subcontract shall provide for payment on a cost plus a percentage of cost basis, and any fee payable under cost reimbursement type lower-tier subcontracts shall not exceed the fee limitations in FAR 15.404-4(c)(4)(i).
- (h) The Subcontractor shall give the NREL Subcontract Administrator immediate written notice of any action or suit filed and prompt notice of any claim made against the Subcontractor by any lower-tier Subcontractor or vendor that, in the opinion of the Subcontractor, may result in litigation related in any way to this subcontract, with respect to which the Subcontractor may be entitled to reimbursement from NREL/Government.
- (i) NREL/Government reserves the right to review the Subcontractor's purchasing system as set forth in FAR Subpart 44.3.
- (j) Paragraphs (d) and (f) of this clause do not apply to any of the lower-tier subcontracts identified in the subcontract schedule that were evaluated during negotiations.

Clause 38. LOWER-TIER SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND CONSULTANTS (ARCHITECT-ENGINEER SERVICES) (AUG 1998)

Derived from FAR 52.244-4

(Applies to architect-engineer subcontracts.)

Any lower-tier Subcontractors and outside associates or consultants required by the Subcontractor in connection with the services covered by the subcontract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Subcontractor shall obtain the NREL Subcontract Administrator's written consent before making any substitution for these lower-tier Subcontractors, associates, or consultants.

Clause 39. LOWER-TIER SUBCONTRACTS FOR COMMERCIAL ITEMS (MAR 2007)

Derived from FAR 52.244-6 (FD)

(Applies to subcontracts for supplies or services other than commercial items.)

- (a) Definitions. As used in this clause—
 - (1) "Commercial item" has the meaning contained in Federal Acquisition Regulation 2.101, Definitions.
 - (2) "Lower-tier Subcontract" includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Subcontractor or Subcontractor at any tier.
- (b) To the maximum extent practicable, the Subcontractor shall incorporate, and require its Subcontractors at all tiers to incorporate, commercial items or non-developmental items as components of items to be supplied under this subcontract.
- (c)
 - (1) The Subcontractor shall insert the following clauses in lower-tier subcontracts for commercial items:
 - (i) 52.219-8, Utilization of Small Business Concerns (May 2004) (15 U.S.C. 637(d) (2) and (3)), in all lower-tier subcontracts that offer further subcontracting opportunities. If the lower-tier subcontract (except subcontracts to small business concerns) exceeds \$550,000 (\$1,000,000 for construction of any public facility), the lower-tier Subcontractor must include 52.219-8 in sub tier subcontracts that offer subcontracting opportunities.

- (ii) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).
 - (iii) 52.222-35, Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Sept 2006) (38 U.S.C. 4212(a)).
 - (iv) 52.222-36, Affirmative Action for Workers with Disabilities (June 1998) (29 U.S.C. 793).
 - (v) 52.222-39, Notification of Employee Rights Concerning Payment of Union Dues or Fees (Dec 2004) (E.O. 13201). Flow down as required in accordance with paragraph (g) of FAR clause 52.222-39.
 - (vi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. App. 1241 and 10 U.S.C. 2631) (flow down required in accordance with paragraph (d) of FAR clause 52.247-64).
- (2) While not required, the Subcontractor may flow down to lower-tier subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.
- (d) The Subcontractor shall include the terms of this clause, including this paragraph (d), in lower-tier subcontracts awarded under this subcontract.

Clause 40. PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JUN 2003)

Derived from FAR 52.247-63 (FD)

(Applies to subcontracts that involve international air transportation.)

- (a) Definitions. As used in this clause—
 - (1) “International air transportation,” means transportation by air between a place in the United States and a place outside the United States or between two places both of which are outside the United States.
 - (2) “United States” means the 50 States, the District of Columbia, and outlying areas.
 - (3) “U.S.-flag air carrier,” means an air carrier holding a certificate under 49 U.S.C. Chapter 411.
- (b) Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) (Fly America Act) requires that all Federal agencies and Government contractors and Subcontractors use U.S.-flag air carriers for U.S. Government-financed international air transportation of personnel (and their personal effects) or property, to the extent that service by those carriers is available. It requires the Comptroller General of the United States, in the absence of satisfactory proof of the necessity for foreign-flag air transportation, to disallow expenditures from funds, appropriated or otherwise established for the account of the United States, for international air transportation secured aboard a foreign-flag air carrier if a U.S.-flag air carrier is available to provide such services.
- (c) If available, the Subcontractor, in performing work under this contract, shall use U.S.-flag carriers for international air transportation of personnel (and their personal effects) or property.
- (d) In the event that the Subcontractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Subcontractor shall include a statement on vouchers involving such transportation essentially as follows:
 - Statement of Unavailability of U.S.-Flag Air Carriers
 - International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use

foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [State reasons]:

Clause 41. PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (FEB 2006)

Derived from FAR 52.247-64 (FD)

(Applies to subcontracts that involve ocean transportation of supplies subject to the Cargo Preference Act of 1954.)

- (a) Except as provided in paragraph (e) of this clause, the Cargo Preference Act of 1954 (46 U.S.C. App. 1241(b)) requires that Federal departments and agencies shall transport in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of equipment, materials, or commodities that may be transported in ocean vessels (computed separately for dry bulk carriers, dry cargo liners, and tankers). Such transportation shall be accomplished when any equipment, materials, or commodities, located within or outside the United States, that may be transported by ocean vessel are—
 - (1) Acquired for a U.S. Government agency account;
 - (2) Furnished to, or for the account of, any foreign nation without provision for reimbursement;
 - (3) Furnished for the account of a foreign nation in connection with which the United States advances funds or credits, or guarantees the convertibility of foreign currencies; or
 - (4) Acquired with advance of funds, loans, or guaranties made by or on behalf of the United States.
- (b) The Subcontractor shall use privately owned U.S.-flag commercial vessels to ship at least 50 percent of the gross tonnage involved under this contract (computed separately for dry bulk carriers, dry cargo liners, and tankers) whenever shipping any equipment, materials, or commodities under the conditions set forth in paragraph (a) of this clause, to the extent that such vessels are available at rates that are fair and reasonable for privately owned U.S.-flag commercial vessels.
- (c)
 - (1) The Subcontractor shall submit one legible copy of a rated on-board ocean bill of lading for each shipment to both—
 - (i) The NREL Subcontract Administrator, and
 - (ii) The Office of Cargo Preference
Maritime Administration (MAR-590)
400 Seventh Street, SW
Washington, DC 20590
Lower-tier Subcontractor bills of lading shall be submitted through the Subcontractor.
 - (2) The Subcontractor shall furnish these bill of lading copies
 - (i) Within twenty (20) working days of the date of loading for shipments originating in the United States, or
 - (ii) Within thirty (30) working days for shipments originating outside the United States. Each bill of lading copy shall contain the following information:
 - (A) Sponsoring U.S. Government agency
 - (B) Name of vessel
 - (C) Vessel flag of registry

NREL Appendix B-5

- (D) Date of loading
 - (E) Port of loading
 - (F) Port of final discharge
 - (G) Description of commodity
 - (H) Gross weight in pounds and cubic feet if available, and
 - (I) Total ocean freight revenue in U.S. dollars.
- (d) The Subcontractor shall insert the substance of this clause, including this paragraph (d), in all lower-tier subcontracts or purchase orders under this contract, except those described in paragraph (e)(4).
- (e) The requirement in paragraph (a) does not apply to—
 - (1) Cargoes carried in vessels as required or authorized by law or treaty;
 - (2) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353);
 - (3) Shipments of classified supplies when the classification prohibits the use of non-Government vessels; and
 - (4) Lower-tier subcontracts or purchase orders for the acquisition of commercial items unless—
 - (i) This contract is—
 - (A) A subcontract or agreement for ocean transportation services; or
 - (B) A construction contract; or
 - (ii) The supplies being transported are—
 - (A) Items the Subcontractor is reselling or distributing to the NREL/Government without adding value generally, the Subcontractor does not add value to the items when it lower-tier subcontracts items for f.o.b. destination shipment); or
 - (B) Shipped in direct support of U.S. military—
 - (1) Contingency operations;
 - (2) Exercises; or
 - (3) Forces deployed in connection with United Nations or North Atlantic Treaty Organization humanitarian or peacekeeping operations.
- (f) Guidance regarding fair and reasonable rates for privately owned U.S.-flag commercial vessels may be obtained from:
 - Office of Costs and Rates
 - Maritime Administration
 - 400 Seventh Street, SW
 - Washington DC 20590
 - Phone: (202) 366-4610

Clause 42. TERMINATION (FIXED PRICE ARCHITECT-ENGINEER) (APR 1984)

Derived from FAR 52.249-7 (FD)

(Applies to fixed price architect-engineer subcontracts.)

- (a) NREL may terminate this subcontract in whole or, from time to time, in part, for NREL's/Government's convenience or because of the failure of the Subcontractor to fulfill the subcontract obligations. The NREL Subcontract Administrator shall terminate by delivering to the Subcontractor a Notice of Termination specifying the

nature, extent, and effective date of the termination. Upon receipt of the notice, the Subcontractor shall—

- (1) Immediately discontinue all services affected (unless the notice directs otherwise); and
 - (2) Deliver to the NREL Subcontract Administrator all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated in performing this subcontract, whether completed or in process.
- (b) If the termination is for the convenience of NREL/Government, the NREL Subcontract Administrator shall make an equitable adjustment in the subcontract price but shall allow no anticipated profit on unperformed services.
- (c) If the termination is for failure of the Subcontractor to fulfill the subcontract obligations, NREL/Government may complete the work by subcontract or otherwise and the Subcontractor shall be liable for any additional cost incurred by NREL.
- (d) If, after termination for failure to fulfill subcontract obligations, it is determined that the Subcontractor had not failed, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of NREL/Government.
- (e) The rights and remedies of NREL/Government provided in this clause are in addition to any other rights and remedies provided by law or under this subcontract.

Clause 43. WHISTLEBLOWER PROTECTION FOR SUBCONTRACTOR EMPLOYEES (DEC 2000)

Derived from DEAR 952.203-70(FD)

(Applies to subcontracts for work directly related to activities at DOE-owned or -leased facilities.)

- (a) The Subcontractor shall comply with the requirements of "DOE Contractor Employee Protection Program" at 10 CFR Part 708 for work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.
- (b) The Subcontractor shall insert or have inserted the substance of this clause, including this paragraph (b) in subcontracts at all tiers, for subcontracts involving work performed on behalf of DOE directly related to activities at DOE-owned or -leased sites.

Clause 44. SENSITIVE FOREIGN NATIONS CONTROLS (SPECIAL) (MAY 2003)

Derived from (DEAR 952.204-71) (FD)

(Applies to all subcontracts.)

- (a) In connection with any activities in the performance of this subcontract, the Subcontractor agrees to comply with the "Sensitive Foreign Nations Controls" requirements of the Department of Energy, relating to those countries, which may from time to time, be identified to the Subcontractor as sensitive foreign nations. The Subcontractor shall have the right to terminate its performance under this subcontract upon at least sixty (60) days prior written notice to the NREL Subcontract Administrator if the Subcontractor determines that it is unable, without substantially interfering with its policies or without adversely impacting its performance to continue performance of the work under this subcontract as a result of such notification. If the Subcontractor elects to terminate performance, the

provisions of this subcontract regarding termination for the convenience of the Government shall apply.

- (b) The provisions of this clause shall be included in any lower-tier subcontracts.

Clause 45. PUBLIC AFFAIRS (SPECIAL) (OCT 2008)

Derived from DEAR 952.204-75

(Applies to subcontracts where the Subcontractor will release unclassified information related to NREL/DOE policies, programs, and activities.)

- (a) The Subcontractor must cooperate with NREL in releasing general, non-technical information concerning the existence of this subcontract, the identity of the parties, and the character and scope of the Subcontractor's effort to the public and news media, including but not limited to NREL/DOE policies, programs, and activities. The responsibilities under this clause must be accomplished through coordination with the NREL Subcontract Administrator and appropriate NREL public affairs personnel prior to the release of general, non-technical information.
- (b) The Subcontractor is responsible for the development, planning, and coordination of proactive approaches for the timely dissemination of general, non-technical information regarding NREL/DOE activities onsite and offsite, including, but not limited to, operations and programs. Proactive public affairs programs may utilize a variety of communication media, including public workshops, meetings or hearings, open houses, newsletters, press releases, conferences, audio/visual presentations, speeches, forums, tours, and other appropriate stakeholder interactions.
- (c) The Subcontractor's internal procedures must ensure that all releases of general, non-technical information to the public and news media are coordinated through, and approved by, a management official at an appropriate level within the Subcontractor's organization.
- (d) The Subcontractor must comply with the NREL Subcontract Administrator's direction for obtaining advance clearances on oral, written, and audio/visual informational material prepared for public dissemination or use.
- (e) Unless prohibited by law, the Subcontractor must notify the NREL Subcontract Administrator and appropriate NREL public affairs personnel of communications or contacts with Members of Congress relating to the effort performed under the subcontract.
- (f) The Subcontractor must notify the NREL Subcontract Administrator and appropriate NREL public affairs personnel of activities or situations that may attract regional or national news media attention and of non-routine inquiries from national news media relating to the effort performed under the subcontract.
- (g) In releases of general, non-technical information to the public and news media, the Subcontractor must fully and accurately identify the Subcontractor's relationship to NREL/DOE and fully and accurately credit NREL/DOE for its role in funding programs and projects resulting in scientific, technical, and other achievements.
- (h) The release or publication of information of a scientific or technical nature generated under this subcontract is governed by the provisions of Appendix C of this subcontract.

Clause 46. INSPECTION IN ARCHITECT-ENGINEER SUBCONTRACTS (APR 1994)

Derived from DEAR 952.236-71

(Applies to architect-engineer, design-build subcontracts.)

NREL/Government, through any authorized representatives, has the right, at all reasonable times, to inspect or otherwise evaluate the work performed or being performed hereunder and the premises in which it is being performed. If any inspection or evaluation is made by NREL/Government on the premises of the Subcontractor or a lower-tier Subcontractor, the Subcontractor shall provide and shall require the lower-tier Subcontractor to provide all reasonable facilities and assistance for the safety and convenience of NREL/Government representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

Clause 47. FOREIGN TRAVEL (SPECIAL) (MAY 2003)

Derived from DEAR 952.247-70 (DEC 2000) and DOE Order 551.1 (FD)

(Applies to all subcontracts where foreign travel may be required.)

- (a) All foreign travel (one trip or multiple trips), if required in performance of the subcontract, shall be subject to the prior approval of the Department of Energy. Foreign travel is defined as travel from the United States (including Alaska, Hawaii, the Commonwealth of Puerto Rico and the Northern Mariana Islands, and the territories and possessions of the United States) to a foreign country and return, travel between foreign countries, by persons, including foreign nationals, whose salaries or travel expenses or both will ultimately be funded in whole or in part by NREL/DOE. Foreign travel also includes travel funded by non-NREL/DOE sources for which the traveler represents NREL/DOE or conducts business on behalf of NREL/DOE or the U.S. Government.
- (b) Request for approval of foreign travel shall be submitted to NREL a minimum of forty-five (45) days prior to the planned departure date, and be submitted on a NREL Request for Approval of Foreign Travel Form.

Clause 48. ACCESS TO AND OWNERSHIP OF RECORDS (SPECIAL) (OCT 2008)

Derived from DEAR 970.5204-3 (JUL 2005) (FD)

(Applies to cost type subcontracts exceeding \$2M and cost type subcontracts involving complex or hazardous work that is to be performed on a Government-owned or-leased facility and the clause Integration of Environment, Safety, and Health into Work Planning and Execution (48 CFR 970.5223-1), or similar clause, is applicable.)

(Applies to cost type subcontracts where the DOE Contracting Officer or the NREL Subcontract Administrator has specifically notified the Subcontractor that the subcontract is or involves a critical task related to the Prime Contract.)

- (a) Government-owned records. Except as provided in paragraph (b) of this clause, all records acquired or generated by the Subcontractor in its performance of this subcontract shall be the property of the Government and shall be delivered to NREL or the Government or otherwise disposed of by the Subcontractor either as the NREL Subcontract Administrator or the DOE Contracting Officer may from time to time direct during the progress of the work or, in any event, as the NREL Subcontract Administrator or the DOE Contracting Officer shall direct upon completion or termination of the subcontract.

NREL Appendix B-5

- (b) Subcontractor-owned records. The following records are considered the property of the Subcontractor and are not within the scope of paragraph (a) of this clause.
- (1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except for those records described by the Subcontract as being maintained in Privacy Act systems of records.[70 FR 37010 Jun. 28, 2005];
 - (2) Confidential Subcontractor financial information, and correspondence between the Subcontractor and other segments of the Subcontractor (i.e., the Subcontractor's corporate headquarters);
 - (3) Records relating to any procurement action by the Subcontractor, except for accounts, records, documents, and other evidence showing and supporting: all allowable costs incurred; collections accruing to the Subcontractor in connection with the work under this subcontract; other applicable credits, negotiated fixed amounts, and fee accruals under this subcontract; and the receipt, use, and disposition of all Government property coming into the possession of the Subcontractor under this subcontract.;
 - (4) Legal records, including legal opinions, litigation files, and documents covered by the attorney-client and attorney work product privileges; and
 - (5) The following categories of records:
 - (i) Executed license agreements, including exhibits or appendices containing information on royalties, royalty rates, other financial information, or commercialization plans, and all related documents, notes and correspondence.
 - (ii) [Reserved.]
 - (iii) Patent, copyright, mask work, and trademark application files and related Subcontractor invention disclosures, documents and correspondence, where the Subcontractor has elected rights or has permission to assert rights and has not relinquished such rights or turned such rights over to the Government.
- (c) Subcontract completion or termination. In the event of completion or termination of this subcontract, copies of any of the Subcontractor-owned records identified in paragraph (b) of this clause, upon the request of the Government, shall be delivered to DOE or its designees, including successor Prime Contractors. Upon delivery, title to such records shall vest in DOE or its designees, and such records shall be protected in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (d) Inspection, copying, and audit of records. All records acquired or generated by the Subcontractor under this subcontract in the possession of the Subcontractor, including those described at paragraph (b) of this clause, shall be subject to inspection, copying, and audit by the Government or its designees at all reasonable times, and the Subcontractor shall afford the Government or its designees reasonable facilities for such inspection, copying, and audit; provided, however, that upon request by the DOE Contracting Officer or NREL Subcontract Administrator, the Subcontractor shall deliver such records to a location specified by the DOE Contracting Officer or the NREL Subcontract Administrator for inspection, copying,

- and audit. The Government or its designees shall use such records in accordance with applicable federal laws (including the Privacy Act), as appropriate.
- (e) Applicability. Paragraphs (b), (c), and (d) of this clause apply to all records without regard to the date or origination of such records.
 - (f) Records retention standards. Special records retention standards, described at DOE Order 200.1, Information Management Program (version in effect on effective date of Subcontract), are applicable for the classes of records described therein, whether or not the records are owned by the Government or the Subcontractor. In addition, the Subcontractor shall retain individual radiation exposure records generated in the performance of work under this Subcontract until DOE authorizes disposal. The Government may waive application of these record retention schedules, if, upon termination or completion of the subcontract, the Government exercises its right under paragraph (c) of this clause to obtain copies and delivery of records described in paragraphs (a) and (b) of this clause.
 - (g) Lower-Tier Subcontracts. The Subcontractor shall include the requirements of this clause in all lower-tier subcontracts that are of a cost-reimbursement type if any of the following factors is present:
 - (1) The value of the subcontract is greater than \$2 million (unless specifically waived by the DOE Contracting Officer or NREL Subcontract Administrator);
 - (2) The DOE Contracting Officer or NREL Subcontract Administrator notifies the Subcontractor that the lower-tier subcontract is, or involves, a critical task related to the Prime Contract; or
 - (3) The lower tier subcontract involves complex or hazardous work that is to be performed on a Government-owned or-leased facility and the clause Integration of Environment, Safety, and Health into Work Planning and Execution (48 CFR 970.5223-1), or similar clause, is applicable.

Clause 49. PRINTING (DEC 2000)

Derived from DEAR 970.5208-1 (FD)

(Applies to all subcontracts where printing is required as this term is defined in Title I of the U.S. Government Printing and Binding Regulations.)

- (a) To the extent that duplicating or printing services may be required in the performance of this subcontract, the Subcontractor shall provide or secure such services in accordance with the Government Printing and Binding Regulations, Title 44 of the U.S. Code, and DOE Directives relative thereto.
- (b) The term "Printing" includes the following processes: Composition, platemaking, presswork, binding, microform publishing, or the end items produced by such processes. Provided, however, that performance of a requirement under this subcontract involving the duplication of less than five thousand (5,000) copies of a single page, or no more than twenty-five thousand (25,000) units in the aggregate of multiple pages, will not be deemed to be printing.
- (c) Printing services not obtained in compliance with this guidance shall result in the cost of such printing being disallowed.
- (d) The Subcontractor shall include the substance of this clause in all lower-tier subcontracts hereunder which require printing (as that term is defined in Title I of the U.S. Government Printing and Binding Regulations).

Clause 50. INTEGRATION OF ENVIRONMENT, SAFETY, AND HEALTH INTO WORK PLANNING AND EXECUTION (DEC 2000)

Derived from DEAR 970.5223-1(FD)

(Applies to subcontracts involving complex or hazardous work that is to be performed on a Government-owned or -leased facility.)

- (a) For the purposes of this clause:
 - (1) "Safety" encompasses environment, safety, and health, including pollution prevention and waste minimization; and
 - (2) "Employees" include lower-tier Subcontractor employees.
- (b) In performing work under this subcontract, the Subcontractor shall perform work safely, in a manner that ensures adequate protection for employees, the public, and the environment, and shall be accountable for the safe performance of work. The Subcontractor shall exercise a degree of care commensurate with the work and the associated hazards. The Subcontractor shall ensure that management of environment, safety and health (ES&H) functions and activities becomes an integral but visible part of the Subcontractor's work planning and execution processes. The Subcontractor shall, in the performance of work, ensure that:
 - (1) Line management is responsible for the protection of employees, the public, and the environment. Line management includes those Subcontractor and lower-tier Subcontractor employees managing or supervising employees performing work.
 - (2) Clear and unambiguous lines of authority and responsibility for ensuring ES&H are established and maintained at all organizational levels.
 - (3) Personnel possess the experience, knowledge, skills, and abilities that are necessary to discharge their responsibilities.
 - (4) Resources are effectively allocated to address ES&H, programmatic, and operational considerations. Protecting employees, the public, and the environment is a priority whenever activities are planned and performed.
 - (5) Before work is performed, the associated hazards are evaluated and an agreed-upon set of ES&H standards and requirements are established which, if properly implemented, provide adequate assurance that employees, the public, and the environment are protected from adverse consequences.
 - (6) Administrative and engineering controls to prevent and mitigate hazards are tailored to the work being performed and associated hazards. Emphasis should be on designing the work and/or controls to reduce or eliminate the hazards and to prevent accidents and unplanned releases and exposures.
 - (7) The conditions and requirements to be satisfied for operations to be initiated and conducted are established and agreed-upon by NREL/Government and the Subcontractor. These agreed-upon conditions and requirements are requirements of the subcontract and binding upon the Subcontractor. The extent of documentation and level of authority for agreement shall be tailored to the complexity and hazards associated with the work and shall be established in a Safety Management System.
- (c) The Subcontractor shall manage and perform work in accordance with a documented Safety Management System (System) that fulfills all conditions in paragraph (b) of this clause at a minimum. Documentation of the System shall describe how the Subcontractor will:
 - (1) Define the scope of work;
 - (2) Identify and analyze hazards associated with the work;
 - (3) Develop and implement hazard controls;
 - (4) Perform work within controls; and

- (5) Provide feedback on adequacy of controls and continue to improve safety management.
- (d) The System shall describe how the Subcontractor will establish, document, and implement safety performance objectives, performance measures, and commitments in response to NREL/DOE program and budget execution guidance while maintaining the integrity of the System. The System shall also describe how the Subcontractor will measure system effectiveness.
- (e) The Subcontractor shall submit to the NREL Subcontract Administrator documentation of its System for review and approval. Dates for submittal, discussions, and revisions to the System will be established by the NREL Subcontract Administrator. Guidance on the preparation, content, review, and approval of the System will be provided by the NREL Subcontract Administrator. On an annual basis, the Subcontractor shall review and update, for NREL's approval, its safety performance objectives, performance measures, and commitments consistent with and in response to NREL/DOE program and budget execution guidance and direction. Resources shall be identified and allocated to meet the safety objectives and performance commitments as well as maintain the integrity of the entire System. Accordingly, the System shall be integrated with the Subcontractor's business processes for work planning, budgeting, authorization, execution, and change control.
- (f) The Subcontractor shall comply with, and assist NREL/DOE in complying with, ES&H requirements of all applicable laws and regulations, and applicable directives identified in the clause of NREL's Prime Contract entitled "Laws, Regulations, and DOE Directives." The Subcontractor shall cooperate with Federal and non-Federal agencies having jurisdiction over ES&H matters under this subcontract.
- (g) The Subcontractor shall promptly evaluate and resolve any noncompliance with applicable ES&H requirements and the System. If the Subcontractor fails to provide resolution or, if at any time, the Subcontractor's acts or failure to act causes substantial harm or an imminent danger to the environment or health and safety of employees or the public, the NREL Subcontract Administrator may issue an order stopping work in whole or in part. Any stop work order issued by the NREL Subcontract Administrator under this clause (or issued by the Subcontractor to a lower-tier Subcontractor in accordance with paragraph (i) of this clause) shall be without prejudice to any other legal or contractual rights of NREL/Government. In the event that the NREL Subcontract Administrator issues a stop work order, an order authorizing the resumption of the work may be issued at the discretion of the NREL Subcontract Administrator. The Subcontractor shall not be entitled to an extension of time or additional fee or damages by reason of, or in connection with, any work stoppage ordered in accordance with this clause.
- (h) Regardless of the performer of the work, the Subcontractor is responsible for compliance with the ES&H requirements applicable to this subcontract. The Subcontractor is responsible for flowing down the ES&H requirements applicable to this subcontract to subcontracts at any tier to the extent necessary to ensure the Subcontractor's compliance with the requirements.
- (i) The Subcontractor shall include a clause substantially the same as this clause in lower-tier subcontracts involving complex or hazardous work on site at a Government-owned or-leased facility. Such lower-tier subcontracts shall provide for the right to stop work under the conditions described in paragraph (g) of this clause. Depending on the complexity and hazards associated with the work, the Subcontractor may choose not to require the lower-tier Subcontractor to submit a Safety Management System for the Subcontractor's review and approval.

Clause 51. PROPERTY (SPECIAL) (OCT 2008)

Derived from DEAR 970.5245-1 (DEC 2000) and Alternate 1 (Dec 2000)(FD)

(Applies to all subcontracts where Government Property is to be furnished to or acquired by the Subcontractors.)

(Alternate 1 applies if the Subcontractor is a non-profit.)

- (a) Furnishing of Government property.
NREL/Government reserves the right to furnish any property or services required for the performance of the work under this subcontract.
- (b) Title to property.
Except as otherwise provided by the NREL Subcontract Administrator, title to all materials, equipment, supplies, and tangible personal property of every kind and description purchased by the Subcontractor, for the cost of which the Subcontractor is entitled to be reimbursed as a direct item of cost under this subcontract, shall pass directly from the vendor to the Government. NREL/Government reserves the right to inspect, and to accept or reject, any item of such property. The Subcontractor shall make such disposition of rejected items as the NREL Subcontract Administrator shall direct. Title to other property, the cost of which is reimbursable to the Subcontractor under this subcontract, shall pass to and vest in the Government upon:
 - (1) Issuance for use of such property in the performance of this subcontract;
 - (2) Commencement of processing or use of such property in the performance of this subcontract; or
 - (3) Reimbursement of the cost thereof by NREL/Government, whichever first occurs.

Property furnished by NREL/Government and property purchased or furnished by the Subcontractor, title to which vests in the Government, under this paragraph are hereinafter referred to as Government property. Title to Government property shall not be affected by the incorporation of the property into or the attachment of it to any property not owned by the Government, nor shall such Government property or any part thereof, be or become a fixture or lose its identity as personality by reason of affixation to any realty.

- (c) Identification.
To the extent directed by the NREL Subcontract Administrator, the Subcontractor shall identify Government property coming into the Subcontractor's possession or custody, by marking and segregating in such a way, satisfactory to the NREL Subcontract Administrator, as shall indicate its ownership by the Government.
- (d) Disposition.
The Subcontractor shall make such disposition of Government property that has come into the possession or custody of the Subcontractor under this subcontract as the NREL Subcontract Administrator may direct during the progress of the work or upon completion or termination of this subcontract. Upon completion or termination of this subcontract, the Government through NREL shall:
 - (1) Determine if the equipment is excess;
 - (2) Make the equipment available to all other Government agencies; and
 - (3) Conduct an auction to dispose of the equipment if no other agency is interested in the property.

If the above does not result in disposition of the equipment, then the Subcontractor may, upon such terms and conditions as the NREL Subcontract Administrator may approve, sell, or exchange such property, or acquire such property at a price agreed upon by the Government through the NREL Subcontract Administrator and the Subcontractor as the fair value thereof. The amount received by the Subcontractor as the result of any disposition, or the agreed fair value of any such property

- acquired by the Subcontractor, shall be applied in reduction of costs allowable under this subcontract or shall be otherwise credited to account to NREL/Government, as the NREL Subcontract Administrator may direct. Upon completion of the work or the termination of this subcontract, the Subcontractor shall render an accounting, as prescribed by the NREL Subcontract Administrator, of all Government property which had come into the possession or custody of the Subcontractor under this subcontract.
- (e) Protection of Government property-management of high-risk property and classified materials.
- (1) The Subcontractor shall take all reasonable precautions, and such other actions as may be directed by the NREL Subcontract Administrator, or in the absence of such direction, in accordance with sound business practice, to safeguard and protect Government property in the Subcontractor's possession or custody.
 - (2) In addition, the Subcontractor shall ensure that adequate safeguards are in place, and adhered to, for the handling, control and disposition of high-risk property and classified materials throughout the life cycle of the property and materials consistent with the policies, practices and procedures for property management contained in the Federal Property Management regulations (41 CFR chapter 101), the Department of Energy Property Management regulations (41 CFR chapter 109), and other applicable regulations.
 - (3) High-risk property is property, the loss, destruction, damage to, or the unintended or premature transfer of which could pose risks to the public, the environment, or the national security interests of the United States. High-risk property includes proliferation sensitive, nuclear related dual use, export controlled, chemically or radioactively contaminated, hazardous, and specially designed and prepared property, including property on the militarily critical technologies list.
- (f) Risk of loss of Government property.
- (1) The Subcontractor shall not be liable for the loss or destruction of, or damage to, Government property unless such loss, destruction, or damage was caused by any of the following:
 - (i) Willful misconduct or lack of good faith on the part of the Subcontractor's managerial personnel;
 - (ii) Failure of the Subcontractor's managerial personnel to take all reasonable steps to comply with any appropriate written direction of the NREL Subcontract Administrator to safeguard such property under paragraph (e) of this clause; or
 - (iii) Failure of Subcontractor managerial personnel to establish, administer, or properly maintain an approved property management system in accordance with paragraph (i) (1) of this clause.
 - (2) If, after an initial review of the facts, the NREL Subcontract Administrator informs the Subcontractor that there is reason to believe that the loss, destruction of, or damage to the Government property results from conduct falling within one of the categories set forth above, the burden of proof shall be upon the Subcontractor to show that the Subcontractor should not be required to compensate NREL/Government for the loss, destruction, or damage.
 - (3) In the event that the Subcontractor is determined liable for the loss, destruction or damage to Government property in accordance with (f)(1) of

this clause, the Subcontractor's compensation to NREL/Government shall be determined as follows:

- (i) For damaged property, the compensation shall be the cost of repairing such damaged property, plus any costs incurred for temporary replacement of the damaged property. However, the value of repair costs shall not exceed the fair market value of the damaged property. If a fair market value of the property does not exist, the Government through the NREL Subcontract Administrator shall determine the value of such property, consistent with all relevant facts and circumstances.
 - (ii) For destroyed or lost property, the compensation shall be the fair market value of such property at the time of such loss or destruction, plus any costs incurred for temporary replacement and costs associated with the disposition of destroyed property. If a fair market value of the property does not exist, the Government through the NREL Subcontract Administrator shall determine the value of such property, consistent with all relevant facts and circumstances.
 - (iii) The portion of the cost of insurance obtained by the Subcontractor that is allocable to coverage of risks of loss referred to in paragraph (f) (1) of this clause is not allowable.
- (g) Steps to be taken in event of loss.

In the event of any damage, destruction, or loss to Government property in the possession or custody of the Subcontractor with a value above the threshold set out in the Subcontractor's approved property management system, the Subcontractor:

 - (1) Shall immediately inform the NREL Subcontract Administrator of the occasion and extent thereof;
 - (2) Shall take all reasonable steps to protect the property remaining; and
 - (3) Shall repair or replace the damaged, destroyed, or lost property in accordance with the written direction of the NREL Subcontract Administrator. The Subcontractor shall take no action prejudicial to the right of NREL/Government to recover and, therefore, shall furnish to NREL/Government, on request, all reasonable assistance in obtaining recovery.
- (h) Government property for NREL/Government use only.

Government property shall be used only for the performance of this subcontract.
- (i) Property Management.
 - (1) Property Management System.
 - (i) The Subcontractor shall establish, administer, and properly maintain an approved property management system of accounting for and control, utilization, maintenance, repair, protection, preservation, and disposition of Government property in its possession under the subcontract. The Subcontractor's property management system shall be submitted to the NREL Subcontract Administrator for approval and shall be maintained and administered in accordance with sound business practice, applicable Federal Property Management regulations and Department of Energy Property Management regulations, and such directives or instructions which the NREL Subcontract Administrator may from time to time prescribe.
 - (ii) In order for a property management system to be approved, it must provide for:

- (A) Comprehensive coverage of property from the requirement identification, through its life cycle, to final disposition;
 - (B) Employee personal responsibility and accountability for Government-owned property;
 - (C) Full integration with the Subcontractor's other administrative and financial systems; and
 - (D) A method for continuously improving property management practices through the identification of best practices established by "best in class" performers.
- (iii) Approval of the Subcontractor's property management system shall be contingent upon the completion of the baseline inventory as provided in subparagraph (i) (2) of this clause.
- (2) Property Inventory.
 - (i) Unless otherwise directed by the NREL Subcontract Administrator, the Subcontractor shall, within six (6) months after execution of the subcontract, provide a baseline inventory covering all items of Government property.
 - (ii) If the Subcontractor is succeeding another Subcontractor in the performance of this subcontract, the Subcontractor shall conduct a joint reconciliation of the property inventory with the predecessor Subcontractor. The Subcontractor agrees to participate in a joint reconciliation of the property inventory at the completion of this subcontract. This information will be used to provide a baseline for the succeeding subcontract as well as information for closeout of the predecessor subcontract.
- (j) The term "Subcontractor's managerial personnel," as used in this clause, means the Subcontractor's directors, officers and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of:
 - (1) All or substantially all of the Subcontractor's business; or
 - (2) All or substantially all of the Subcontractor's operations at any one facility or separate location to which this subcontract is being performed; or
 - (3) A separate and complete major industrial operation in connection with the performance of this subcontract; or
 - (4) A separate and complete major construction, alteration, or repair operation in connection with performance of this subcontract; or
 - (5) A separate and discrete major task or operation in connection with the performance of this subcontract.
- (k) The Subcontractor shall include this clause in all cost reimbursable lower-tier subcontracts.

ALTERNATE I (DEC 2000)

If the Subcontractor is a non-profit Subcontractor replace paragraph (j) of the basic clause with the following paragraph (j):

- (j) The term "Subcontractor's managerial personnel," as used in this clause, means the Subcontractor's directors, officers, and any of its managers, superintendents, or other equivalent representatives who have supervision or direction of all or substantially all of:
 - (1) The Subcontractor's business; or
 - (2) The Subcontractor's operations at any one facility or separate location at which this subcontract is being performed; or

NREL Appendix B-5

- (3) The Subcontractor's property system and/or a Major System Acquisition or Major Project as defined in DOE Order 4700.1 (Version in effect on effective date of subcontract).